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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

Jocelyn Newman, Circuit Court Judge

Lower Court Case No. 2022-CP-40-01906

Thurmond Guess, Sr., Appellant,

v.

Pastor Darrell Jackson, Marshall Green, Rose A. English, Alfred T. Guess, and Marjorie Guess, Defendants,

of whom Marshall Green, Alfred T. Guess, and Marjorie Guess are the Respondents.

Appellate Case No. 2026-000276

JOINT FINAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

Table of Authorities....ii

Counterstatement of Issues on Appeal....1

Statement of the Case....1

Standard of Review....2

Statement of Facts....2

Argument....3

1.

The judgment must be affirmed because Appellant does not challenge the grounds on which the circuit court relied....3

2.

The circuit court correctly dismissed the complaint....4

3.

Appellant's remaining arguments are unpreserved and without merit....6

Conclusion....8

TABLE OF AUTHORITIES

Cases

Ardis v. Cox,
314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993).....6

Ashley River Props. I, LLC v. Ashley River Props. II, LLC,
374 S.C. 271, 648 S.E.2d 295 (Ct. App. 2007).....2

Biales v. Young,
315 S.C. 166, 432 S.E.2d 482 (1993).....4

Brock v. Bennett,
313 S.C. 513, 443 S.E.2d 409 (Ct. App. 1994).....4

Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.,
300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989).....5

Capital City Ins. Co. v. BP Staff, Inc.,
382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009).....2

Doe v. Marion,
373 S.C. 390, 645 S.E.2d 245 (2007).....2

Grayson v. Fidelity Life Ins. Co. of Philadelphia,
114 S.C. 130, 103 S.E. 477 (1920).....5

Jones v. Lott,
387 S.C. 339, 692 S.E.2d 900 (2010).....3

King v. Oxford,
282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984).....6

Plyler v. Burns,
373 S.C. 637, 647 S.E.2d 188 (2007).....2

S.C. Pub. Interest Found. v. Wilson,
437 S.C. 334, 878 S.E.2d 891 (2022).....7

Staubes v. City of Folly Beach,
339 S.C. 406, 529 S.E.2d 543 (2000).....6

State v. Guthrie,
352 S.C. 103, 572 S.E.2d 309 (Ct. App. 2002).....7

Toussaint v. Ham,
292 S.C. 415, 357 S.E.2d 8 (1987).....2

Williams v. Condon,
347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001).....2

Youngblood v. S.C. Dep't of Soc. Servs.,
402 S.C. 311, 741 S.E.2d 515 (2013).....4

Constitutional Provisions

U.S. Const. amend. VII.....6

U.S. Const. amend. XIV.....6

Statutes

S.C. Code § 15-3-530(7).....5

Rules

Rule 12(b)(6), SCRCP.....2

Rule 55, SCRCP.....6

Rule 220(c), SCACR.....4

COUNTERSTATEMENT OF ISSUES ON APPEAL

1.

Where the circuit court dismissed the complaint on three independent grounds—lack of standing, the statute of limitations, and failure to state a claim—and Appellant's brief challenges none of those grounds, must the judgment be affirmed as the law of the case?

2.

Whether the circuit court correctly dismissed the complaint where Appellant lacks standing to challenge an easement affecting property he does not own, the statute of limitations expired decades before he sued, and the complaint pleads no facts establishing the elements of constructive fraud?

STATEMENT OF THE CASE

Appellant filed this action in the Richland County Court of Common Pleas on April 13, 2022, alleging that the Defendants committed constructive fraud in connection with a right-of-way easement over property located at 3004 Dell Drive in Columbia. (R. 1-3). Defendants Alfred T. Guess and Marjorie Guess filed an answer denying the allegations on April 28, 2022. (R. 4-5).

Marshall Green died on September 7, 2024, and Alfred T. Guess died on July 25, 2025. (R. 97). On October 7, 2025, Appellant moved to substitute the personal representatives of their estates. (R. 98). Defendant Marjorie Guess moved to dismiss on November 10, 2025, for lack of standing, the statute of limitations, and failure to state a claim. (R. 91-92; R. 95-96; R. 93-94). The Estate of Marshall Green moved to dismiss on December 17, 2025, on the same grounds. (R. 101-105).

Following a hearing on January 5, 2026 the circuit court granted the Respondents' motions to dismiss. (R. 97-100).

STANDARD OF REVIEW

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

"The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)). "The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Capital City Ins. Co.*, 382 S.C. at 99, 674 S.E.2d at 528 (citing *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct. App. 2007)).

STATEMENT OF FACTS

The property at 3004 Dell Drive in Columbia was owned by Arthur Guess and Lila Mae Guess, the parents of Appellant and Respondent Alfred T. Guess. (R. 97; R. 91-92). Richland County obtained a right-of-way easement over the property to install and maintain a storm drain more than three decades before Appellant filed suit. (R. 97-98; R. 95-96). The easement was recorded in the Richland County Register of Deeds, and the County has openly accessed the storm drain for more than thirty years. (R. 98).

Arthur Guess died in the 1970s, and Lila Mae Guess died in 2008. (R. 97). Their estates have never been probated, and Appellant has never been appointed personal representative of either estate. (R. 99; R. 91-92). Appellant does not own and does not reside at 3004 Dell Drive, and he was not a party to the easement. (R. 91-92).

Appellant alleges that he first learned of the easement in October 2021, after Respondents Alfred T. Guess and Marjorie Guess sought to use the property as collateral for a loan, and he filed this action the following year. (R. 98; R. 2). The complaint alleges in general terms that the Defendants participated in or concealed a fraudulent easement, but it does not identify any specific act by any Respondent. (R. 1-3; R. 99).

ARGUMENT

1.

The judgment must be affirmed because Appellant does not challenge the grounds on which the circuit court relied.

The circuit court dismissed the complaint on three separate and independent grounds: that Appellant lacks standing, that the statute of limitations expired, and that the complaint fails to state a claim for constructive fraud. (R. 98-99). Each ground independently supports the judgment. Appellant's brief, however, addresses none of them. It argues only that the Respondents were in default and that the court therefore lacked authority to consider a motion to dismiss, and that dismissal violated his rights to a jury trial and to equal protection.

When a trial court rests its ruling on multiple independent grounds and the appellant challenges fewer than all of them, the unchallenged grounds become the law of the case and require affirmance, regardless of the merits of the grounds that are challenged. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("where a decision is based on more than one ground, the

appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case"); *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal"); *see also* Rule 220(c), SCACR (appellate court may affirm on any ground appearing in the record). Because Appellant does not contest the circuit court's rulings on standing, limitations, or the sufficiency of the complaint, each of those rulings stands, and any one of them is sufficient to affirm the judgment.

2.

The circuit court correctly dismissed the complaint.

Even if the Court reaches the merits, each of the three grounds was correct, and any one requires affirmance.

A. Appellant lacks standing.

Standing is a threshold requirement of justiciability; a plaintiff who lacks standing presents no controversy for the court to decide. *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994) ("Once it is determined a plaintiff has no standing to prosecute, the court must dismiss the action"). To have standing, the plaintiff must have a personal stake in the subject matter of the litigation. *See Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317-18, 741 S.E.2d 515, 518 (2013) (the elements of constitutional standing are that a party "must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest . . . a causal connection must exist between the injury and the challenged conduct . . . [and] it must be likely that a favorable decision will redress the injury") (internal citations and quotations omitted).

Appellant does not own 3004 Dell Drive, was not a party to the easement, and has never been appointed personal representative of the estates of Arthur or Lila Mae Guess, which remain unprobated. (R. 99; R. 91-92). He therefore has no legal interest in the property and no authority to bring an action challenging an easement to which he was a stranger. The circuit court correctly held that he lacks standing, and this Court should affirm.

B. The statute of limitations expired.

"In South Carolina, the statute of limitations for causes of action for fraud is governed by the 'discovery rule,' and does not begin to run until discovery of the fraud itself or of 'such facts as would have led to the knowledge thereof, if pursued with reasonable diligence.'" *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989) (quoting *Grayson v. Fidelity Life Ins. Co. of Philadelphia*, 114 S.C. 130, 135, 103 S.E. 477 (1920). "A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances could have been known to the party through the exercise of ordinary care and reasonable diligence, the same result follows." *Burgess*, 300 S.C. at 185, 386 S.E.2d at 800. The statute of limitations applicable to this case is three years. S.C. Code § 15-3-530(7).

The easement here was executed more than three decades before Appellant sued, was recorded in the public records of the Richland County Register of Deeds, and was the basis for the County's open and continuous use of a storm drain for more than thirty years. (R. 98). Any reasonable inquiry would have disclosed it. The circuit court correctly found that the statute of limitations had long since expired. This Court should affirm.

C. The complaint fails to state a claim for constructive fraud.

"In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993) (citing *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984)). "A complaint is fatally defective if it fails to allege all nine elements of fraud" and if the complaint fails to allege any element the circuit court should dismiss the action. *Id*.

Appellant's complaint pleads only conclusions. It does not identify any representation made by any Respondent, or any specific act by Marshall Green, Alfred T. Guess, or Marjorie Guess in the alleged fraud. (R. 99; R. 1-3). The circuit court correctly concluded that Appellant failed to plead a valid claim for fraud and correctly dismissed his lawsuit and this Court should affirm.

3.

Appellant's remaining arguments are unpreserved and without merit.

Appellant's arguments concerning default under Rule 55, SCRCP, his right to a jury trial under the Seventh Amendment, and equal protection under the Fourteenth Amendment were never presented to or ruled upon by the circuit court. An issue must be both raised to and ruled upon by the trial court to be preserved for appellate review. *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review").

Furthermore, Appellant's claim that the Respondents were in default is not entirely correct. Respondents Alfred T. Guess and Marjorie Guess filed an answer denying the allegations on April 28, 2022; only Marshall Green did not answer. (R. 4-5). A defendant who has answered is not in default. In any event, an entry of default would not have deprived the circuit court of its authority to dismiss the action for lack of standing or on statute-of-limitations grounds, both of which a court may address regardless of a defendant's default. *S.C. Pub. Interest Found v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) ("A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction); *State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311 (Ct. App. 2002) ("The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court"). Nor does a plaintiff who lacks standing and whose claim is time-barred have any right to submit that claim to a jury.

This Court should affirm the sound judgment of the circuit court.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the Court affirm the circuit court's order dismissing the complaint.

Respectfully submitted,

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This 15th day of September 2026