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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-001006

Sumter County,..... Respondent,

v.

Willie S. Spann III,..... Appellant.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES

- I. Whether the circuit court erred in granting summary judgment where the evidence and reasonable inferences concerning the nature and classification of the use of Appellant's property were disputed.
- II. Whether the circuit court erred in concluding, as a matter of law, that the activities on the property necessarily constituted a prohibited trucking use under SIC 4213/NAICS 484 rather than a use requiring further factual and legal inquiry under the County's zoning classifications.
- III. Whether the permanent injunctive relief should be reversed or vacated because it rests upon the summary-judgment determination challenged in Issues I and II.
- IV. Whether the circuit court could properly rely on repeated government drone surveillance evidence directed at Appellant's private residential property. Appellant acknowledges this constitutional objection was not raised and ruled upon below and therefore may be unpreserved; Appellant includes the issue only to the extent this Court determines it is reviewable.

RESPONDENT'S COUNTERSTATEMENT OF ISSUES

- I. Whether the circuit court erred in granting summary judgment when the uncontradicted and uncontested evidence shows Appellant used his property as the base of operations for a trucking company.
- II. Whether the circuit court erred in granting injunctive relief when Appellant violated the applicable ordinance.

STATEMENT OF THE CASE

This appeal arises from a circuit court's order granting summary judgment in a straightforward zoning dispute between Sumter County ("the County") and Willie S. Spann, III ("Appellant"). Appellant owns real property in Sumter, South Carolina ("the Property"). The Property is located in the Agricultural Conservation ("AC") Zoning District, which, like every other zoning district in the County, has certain limitations and restrictions concerning the use of property located therein.

After Appellant refused to bring the Property into compliance, the County filed this lawsuit seeking to enforce certain provisions of its duly enacted Zoning and Developmental Standards Ordinance ("the Ordinance") by obtaining declaratory and injunctive relief. Following discovery, the circuit court granted the County's motion for summary judgment, finding Appellant violated the Ordinance because he was operating a prohibited trucking company on the Property.

Appellant now challenges the circuit court's decision to grant the County's request for injunctive relief after the circuit court granted summary judgment in the County's favor. Appellant does not necessarily challenge the applicability of the Ordinance, nor does he challenge the ultimate conclusion that operating a trucking company on the Property would violate the Ordinance. Rather, he argues the circuit court erred by failing to view the evidence in a light most favorable to him and relying on drone photographs of the Property in reaching its decision. The circuit court committed no error.

This Court should affirm for three reasons: (1) the substance of Appellant's argument is inconsistent with our summary judgment jurisprudence; (2) the uncontradicted evidence, including Appellant's own admissions during his deposition testimony, demonstrates he was operating a trucking operation on the Property; and (3) to the extent the circuit court relied on the drone

photographs in reaching this conclusion, it was not error, and any potential error was certainly harmless because other evidence provides an independent basis for the circuit court's ruling.

BACKGROUND

Appellant purchased the Property on September 23, 2020. A copy of the deed was recorded with the Sumter County Register of Deeds on October 9, 2020. (MSJ Ex. B). The Property is located in the Agricultural Conservation ("AC") Zoning District, which, like every other zoning district, has certain legislatively authorized limitations and restrictions concerning the use of property located therein. (MSJ Ex. A). The Property is listed as the physical address for the business operations of a trucking company of which Appellant is the managing member.¹ (MSJ Ex. C). That company is an active South Carolina Transportation Company operating under USDOT Number 3809487. (MSJ Ex. E).

Due to the small size of the County's Planning Department, the County's investigation into zoning matters is primarily driven by community complaints or inquiries. (Derwort Dep. 11:20–22). Here, the County began its investigation after receiving a complaint and inquiry from an adjacent property owner regarding certain operations occurring on the Property. (Derwort Dep. 8:12–16). At several times during its subsequent investigation, the County observed multiple semi-trucks and trailers stored on the Property, indicating trucking operations were being performed on the Property in violation of the County's Ordinance. (MSJ Exs. O–P).

¹ Appellant's trucking company is LA Express Logistics, LLC ("LA Express"). Although LA Express was also a defendant in the proceedings below and was initially an appellant to this appeal, LA Express has since been dismissed by this Court's order for not having requisite counsel to represent an LLC. With respect to LA Express, the trucking company for which the circuit court's order applies, the circuit court's findings are now the law of the case.

On April 11, 2022, the County sent Appellant a Notice of Violation by certified mail. (Notice of Violation). This notice stated, “it appears the [P]roperty is being used to carry out transportation business related land use activities.” (Notice of Violation). It further explained that the parking and storage of commercial trucks is a violation of the Ordinance and is not permitted within the AC District. (Notice of Violation). Appellant was also provided with a copy of the applicable provisions of the Ordinance. (Notice of Violation). Under the County’s corrective action plan, Appellant was permitted to keep one semi-truck and trailer on the Property; the plan required all other commercial vehicles and trailers to be removed from the Property. (Notice of Violation).

Three days later, Appellant informed the County that he would not comply with the corrective actions or the Ordinance. (MSJ Memo at 4). Following that interaction, the County observed Appellant’s continued non-compliance on May 6, 2023, July 21, 2024, and July 28, 2024. (MSJ Order 6–7).

The County initiated this zoning action on September 1, 2022. (Complaint). The County also moved for a temporary injunction prohibiting Appellant from continuing to violate the Ordinance until this matter was resolved. (Mtn. for Temp. Inj.). The County’s request for injunctive relief was granted, and the circuit court (Judge Cothran) issued an order requiring Appellant to bring the Property into compliance by performing the above-described corrective actions. (Temporary Injunction Order). Notably, that order found sufficient evidence that the Ordinance applies to this factual situation and that Appellant was violating the Ordinance. (TI Order 3–4).

The County subsequently moved for summary judgment, arguing it was entitled to injunctive and declaratory relief because Appellant violated the Ordinance. (MSJ and Memo in

Support). Appellant opposed that motion, arguing he misunderstood the injunction; his conduct did not violate the Ordinance; and that the Ordinance was ambiguous. (Memo in Opp. at 2; Hearing Transcript at 10).

After the hearing, the circuit court (Judge Griffin) granted the County's motion for summary judgment, finding the Ordinance unambiguously covered this dispute and that the uncontradicted evidence showed Appellant violated the Ordinance. (MSJ Order). No motion to reconsider pursuant to Rule 59(e), SCRPC, was filed. This appeal followed.

STANDARD OF REVIEW

"Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure." *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024).

The purpose of summary judgment is to dispose of matters which do not require the services of a factfinder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences, must be viewed in the light most favorable to the nonmoving party." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). However, "summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

“The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion.” *Peek v. Spartanburg Reg'l Healthcare Sys*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005), *holding modified by Poynter Invs., Inc v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). “An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law.” *Id.* When “the record reflects the trial court exercise[ed] its discretion according to the law, [appellate courts] will almost always affirm the ruling.” *State v. Wallace*, 440 S.C. 537, 543, 892 S.E.2d 310, 313 (2023) (internal quotations omitted).

ARGUMENT

I. The circuit court did not err in granting summary judgment because the undisputed evidence shows the Property was the nucleus of a trucking operation.

Appellant contends the circuit court erred by failing to view the evidence in a light most favorable to him. (App. Initial Br. 7–8). Specifically, he claims that a trucking operation is limited to the loading and unloading of commercial trucks, and such characterization is sufficient to preclude summary judgment. (App. Initial Br. 7). The circuit court correctly rejected that irrational construction. (MSJ Order).

(a) The Uncontradicted evidence establishes a violation of the Ordinance.

Appellant does not dispute that the Property is zoned for Agricultural Conservation. (Memo in Opp. at 2). Nor does he dispute that a trucking operation is not a permitted use of the property located in the AC District. It is also undisputed that Appellant is the sole owner of a company providing trucking services. (App. Dep. 11:17–19). Appellant’s testimony establishes that he owns four semi-trucks and trailers. (App. Dep. 18–19). His testimony illustrates that the Property functioned as the base of operations for his trucking company. (App. Dep. 28–29; 53). He also testified that all mechanical and electrical maintenance; oil and tire changes; body, paint, and glass

repairs; and washing occur on the Property. (App. Dep. 28–29; 53). He likewise explained that his trucks were stored and dispatched from the Property to pick up loads at varying locations for delivery throughout the region. (App. Dep. 18–19; App. Affidavit ¶ 6).

Whether Appellant physically loaded or unloaded freight on the Property does not alter the uncontradicted nature of its use. Appellant’s own testimony establishes that the Property functioned as the central hub of his trucking operation. And that alone is sufficient to conclude a trucking operation was taking place at the Property. *See Holman v. Bulldog Trucking Co.*, 311 S.C. 341, 343–47, 428 S.E.2d 889, 891–93 (Ct. App. 1993) (concluding a truck driver’s “base of operations” was the location from which he was dispatched especially when he stored, maintained, and washed his truck at the same location); *see also West v. All. Cap.*, 368 S.C. 246, 254, 628 S.E.2d 279, 283 (Ct. App. 2006) (holding truck storage and repair are actions performed in the ordinary course of a trucking operation under the base of operations rule).

The uncontradicted evidence shows the essential components of a commercial trucking operation—storage, maintenance, repair, and dispatch—occurred on the Property. *See, e.g., Town of Wethersfield v. PR Arrow, LLC*, 187 Conn. App. 604, 637–38, 203 A.3d 645, 670–71 (Conn. App. 2019) (explaining the storage of trucks is a significant facet of a trucking business and that the term “trucking operations” pertains “to all phases of the business of transporting goods on trucks”); *Smart v. Carpenter*, 139 N.M. 524, 527, 134 P.3d 811 (N.M. App. 2006) (recognizing that “[p]art of the business of running a trucking enterprise involves the storage of the vehicles when they are not in use”); *see also Windham v. Pace*, 192 S.C. 271, 6 S.E.2d 270, 276 (1939) (finding motor carrier operations extend to general business activities, such as truck repairs, rather than just the operation of individual trucks); *Senn Trucking Co. v. Wasson*, 280 S.C. 279, 284–86,

312 S.E.2d 252, 254–56 (1984) (explaining trucks are used in business when they are “in storage until . . . dispatched to pick up a load of freight in South Carolina”).

In short, Appellant’s argument that a property can only be considered the location of a trucking operation if freight is being loaded or unloaded on the property finds no support in the law or logic.

(b) Appellant’s argument misapprehends summary judgment.

Appellant’s argument also misconceives the summary judgment standard. Appellant does not identify a legal error in the circuit court’s construction of the Ordinance. Nor does he challenge the applicability of the Ordinance. Instead, his principal argument appears to be that his disagreement with the County’s “characterization” of his use of the Property—and now with the circuit court’s application of the uncontradicted evidence to the Ordinance—is sufficient to create a genuine issue of material fact. (App. Initial Br. 7–8). It is not.

“This argument, if accepted, would render summary judgment obsolete, and it is in any event at odds with Rule 56, SCRPC, and our summary judgment jurisprudence.” *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010) (citation modified). A party “cannot create a genuine issue of material fact with the argument that the jury does not have to believe” unfavorable evidence. *Id.*

Appellant cannot transform those undisputed facts into a genuine dispute merely by arguing a jury² could choose to disregard the County’s evidence or draw a different conclusion from his testimony. As our Supreme Court has explained, “[a] jury’s prerogative to disregard uncontradicted testimony is a sound principle of law, but it has no application in a summary

² Neither party requested a jury trial below, and the clerk’s office has always had this matter marked non-jury.

judgment setting.” *Id.* at 548, 649 S.E.2d at 6. Rather, a party opposing summary judgment must identify or put forth evidence demonstrating the existence of a genuine issue for trial. *See SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (“[A]n adverse party may not rest upon the mere allegations or denials of his pleadings. The adverse party’s response, including affidavits or as otherwise provided by [Rule 56, SCRPC], must set forth specific facts showing there is a genuine issue for trial.”).

Appellant’s misapprehension of the summary judgment standard is fatal to his argument. Even when viewing the record in a light most favorable to him, Appellant has not presented or identified any evidence sufficient to create a genuine dispute.

Appellant’s contention does not rest on a conflicting evidentiary record, but on his disagreement with the circuit court’s application of his testimony and undisputed facts to the applicable Ordinance. A party cannot survive summary judgment merely by disagreeing with unfavorable evidence; a dispute is not genuine, and an inference is not reasonable unless it is supported by the evidence. *See Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 856 (2001) (explaining “a party opposing summary judgment [must] come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial”); *see also Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (illustrating that when opposing summary judgment “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine”).

Argument alone is not evidence, and Appellant failed to present adequate evidence to the Court to survive summary judgment.

(c) The Ordinance is not ambiguous.

Next, Appellant contends the circuit court erred in finding the Ordinance was unambiguous. (App. Initial Br. 8–9). Again, Appellant does not appear to challenge whether a trucking operation would violate the Ordinance. Rather, he appears to argue there is an ambiguity as to whether his conduct on the Property might have qualified as some other conditional use. (App. Initial Br. 8).

As an initial matter, Appellant has abandoned this argument because he has cited no authority to support his position. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”). Nonetheless, Appellant cannot demonstrate an error on the merits.

The construction of an ordinance “is a question of law for the court to decide unless there is a controversy about the facts of the case, which must be decided by a jury.” *City of Beaufort v. Holcombe*, 269 S.C. 643, 649, 632 S.E.2d 894, 897 (Ct. App. 2006). But this record does not present a factual controversy. Accordingly, this argument “does not track the fact-based summary judgment review path. Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Eagle Container Co., LLC v. Cnty of Newberry*, 379 S.C. 564, 567–68, 666 S.E.2d 892, 894 (2008).

“It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used.” *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) . “An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Id.* at 68. 459 S.E.2d at 843. “In construing ordinances, the terms used must be taken

in their ordinary and popular meaning.” *Id.*; *see also id* at 67, 459 S.E.2d at 843 (noting decisions concerning the interpretation and application of local zoning ordinances are typically afforded “great deference”).

The Ordinance provides that “[n]o building, structure, parking lot, or land shall hereafter be used . . . unless in compliance with applicable district regulations set forth in this Ordinance.” Ordinance § 3.a.1. At the onset of this litigation, the Ordinance incorporated the Standard Industrial Classification (“SIC”) Code for classifying the use of property. (Derwort Affidavit ¶ 7). Under that code, utilizing property for “trucking services” was not a permitted use. (MSJ Ex. G). Specifically, the SIC Code defined “trucking services” as businesses that provide long-distance trucking and storage services when the freight was over 100 pounds. (MSJ Ex. G).

Before the summary judgment hearing, the County transitioned from the SIC Code to the North American Industry Classification System (“NAICS”) for categorizing property uses. (Derwort Affidavit ¶ 8). Under that standard, “trucking services” is defined as providing “over-the-road transportation of cargo using motor vehicles, such as trucks and tractor trailers.” (MSJ Ex. M).

The change in classification systems does not alter the result. It merely presents a distinction without a difference, because Appellant’s conduct falls squarely within the prohibited use under either the SIC or NAICS Codes. Neither standard, despite Appellant’s urge, limits trucking services to the loading and unloading of commercial trucks. And under either classification, the uncontradicted evidence establishes that the Property was the base of operations for Appellant’s trucking company. Thus, the Ordinance did not permit Appellant’s use of the Property for trucking services.

The thrust of Appellant’s argument to oppose summary judgment on this issue is a red herring. His argument, in essence, tracks as follows—well maybe the Property is not really being used for a trucking operation but really an “automotive mechanical and electrical repair and maintenance” operation. This fails for many reasons. To name only a few, first, Appellant acknowledges that his business (located on the Property) is in fact a trucking business. Second, other than Appellant’s testimony that in addition to storing and dispatching his trucks from the Property he performs the maintenance on his trucks at the Property, there is no evidence to support the contention that he is operating a lone “automotive mechanical and electrical repair maintenance” operation. Third, and importantly, even if Appellant could divorce himself of the obvious trucking classification and cram his use into “automotive mechanical and electrical repair maintenance” uses, those uses too (absent approval from the County and consent of nearby property owners) are prohibited at the Property. *See* Ordinance, Art. 3, Ex. 5 (Use Table). So, even if Appellant succeeds in a self-reclassification of his business operations, it still would be in violation of the Ordinance, and he cannot show any error that would change the outcome of the proceedings below. *See Baker v. Town of Sullivan’s Island*, 279 S.C. 581, 583, 310 S.E.2d 433, 435 (Ct. App. 1983) (applying the harmless error doctrine to the grant of summary of summary judgment and noting “[a]n error not shown to be prejudicial does not constitute grounds for reversal”).

(d) The circuit court did not err in considering unchallenged evidence.

Last, Appellant asserts the circuit court erred in considering drone photographs showing his continued violation of the Ordinance and the preliminary injunction. (App. Initial Br. 10). But the circuit court did not err in considering this uncontested evidence. And additionally, this

evidence was far from the only evidence supporting the County's case and the circuit court's decision.

Appellant, to his credit, candidly concedes this issue is not preserved. (Ap. Initial Br. 10). That concession alone is fatal enough. *See Herron v. Century BMW*, 395 S.C. 461, 467, 719 S.E.2d 640, 643 (noting "South Carolina is not alone in its refusal" to decide even constitutional issues raised for the first time on appeal); *see also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."). Additionally, this issue has been abandoned because Appellant did not present a legal argument or identify any supporting authority. *See Glasscock*, 348 S.C. at 81, 557 S.E.2d at 691 ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); *see also Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal.").

Furthermore, whether for strategic or other reasons, Appellant did not object to the introduction or consideration of Sergeant Adams' affidavit or the drone photographs submitted to the circuit court. (Hearing Transcript at 6). Thus, the circuit court could not have erred by considering uncontested evidence. *See Shearer v. DeShon*, 340 S.C. 472, 484, 126 S.E.2d 514, 520 (1962) (explaining one may not complain of a ruling which he has invited or induced the trial court to make); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2004) (preservation rules prohibit "a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card, and, via a reversal, give him an another opportunity to prove his case"); *State v. Johnson*, 363 S.C. 53, 58–59, 609 S.E.2d

520, 523 (2005) (“If a party fails to properly object, the party is procedurally barred from raising the issue on appeal.”).

Moreover, Appellant has not identified any specific legal error. *See S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 327 S.C 295, 301, 641 S.E.2d 903, 907 (2007) (“If the party is not reasonably clear in his objection to the perceived error, he waives his right to challenge the erroneous ruling on appeal.”). Instead, he merely “requests appropriate relief” in the event this Court finds a Fourth Amendment violation. (App. Initial Br. 11).

The County does not assert these procedural concerns lightly, nor does it ask this Court to apply them with undue rigidity, but the lack of specificity prevents both the County and this Court from meaningfully analyzing Appellant’s argument. *See Forest Dunes Assocs. v. Club Carib, Inc.*, 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990) (“Every ground on appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to grope in the dark to ascertain the precise point at issue.” (internal quotations omitted)). Due to the lack of preservation, objection, and specificity, this argument is procedurally barred and therefore should not be considered.

However, the Court can rest assured knowing that no Fourth Amendment violation has occurred.

A cursory review of the photographs confirms that they captured only open fields. (MSJ Exs. K, O–P). The Fourth Amendment does not protect open fields. *See Oliver v. United States*, 466 U.S. 170, 180 n. 11 (1984) (“It is clear, however, that the term ‘open fields’ may include any unoccupied area outside of the curtilage. An open field need be neither ‘open’ nor a ‘field’ as those terms are used in common speech.”); *see also Dow Chem. Co. v. United States*, 476 U.S. 227, 234 (1986) (“Open fields do not provide the setting for those intimate activities that the

[Fourth] Amendment is intended to shelter from governmental interference or surveillance.”) (citation modified)).

In *Dow Chemical Company*, the U.S. Supreme Court addressed the narrow question of whether “aerial observation . . . without physical entry” violated the Fourth Amendment. 476 U.S. at 237. Even though the pictures in that case provided more details than naked-eye observations, the Court concluded they were “not so revealing of intimate details as to raise constitutional concerns.” *Id.* at 238.

The same is true here. The County’s observations were made from outside the Property. The County never physically intruded into Appellant’s home; the drone remained outside the Property and captured only what was visible from that vantage point. The Fourth Amendment does not prohibit the government from observing what can be seen from a lawful, public vantage point. *See, e.g., California v. Ciraolo*, 476 U.S. 207 (1986) (reasoning the home is not always protected from investigations involving no physical intrusion or trespass); *see also Fla. v. Riley*, 488 U.S. 445, 449 (1989) (“As a general proposition, the police may see what may be seen from a public vantage point where they have a right to be.” (citation modified)).

Because the drone never trespassed onto or over Appellant’s property, the fact that it was flying low is immaterial. *Riley*, 488 U.S. at 451 (“Nor on the facts before us, does it make a difference for Fourth Amendment purposes that the helicopter was flying at 400 feet when the officer saw what was growing in the greenhouse through the partially open roof and sides of the structure. We would have a different case if flying at that altitude had been contrary to law or regulation.”); *see also Dow Chem. Co.*, 476 U.S. at 229 (taking pictures from as low as 1,200 feet did not violate the Fourth Amendment).

This case does not raise concerns regarding enhanced surveillance or enhanced technology. Compare *Dow Chem Co.*, 476 U.S. at 238–39 (finding the use a conventional camera from navigable public airspaces does not violate the Fourth Amendment because the government “was not employing unique sensory device that, for example, could penetrate the walls of buildings and record conversations”); and *Riley*, 488 U.S. at 451–52 (taking pictures from a helicopter flying at 400 feet does not violate the Fourth Amendment because nothing in the record suggested “that helicopters flying at 400 feet are sufficiently rare in this county to lend substance to respondent’s claim that he reasonably anticipated that his greenhouse would not be subject to observations from that altitude”); with *Carpenter v. United States*, 585 US 296, 311–12 (2018) (mapping “a cell phone’s location over the course of 127 days” violated the Fourth Amendment because “when the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone’s user”); and *Kyllo v. United States*, 533 U.S. 27, 34 (2001) (using a thermal imaging device violated the Fourth Amendment because “[o]btaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search—at least where the technology in question is not in the general public use”).

This case is most similar to *Dow Chemical* and *Riley* as the circumstances presented in *Carpenter* and *Kyllo* are not present here. The County did not employ enhanced technology to reveal concealed information, nor did it engage in any form of comprehensive surveillance. The drone used a conventional camera to document the presence of commercial trucks and trailers stored in an open field. See *Dow Chem. Co.*, 476 U.S. at 234 (explaining that “taking a photograph from a nearby hillside overlooking such a facility, would give rise to no Fourth Amendment problem”); see also *Carpenter*, 585 U.S. at 316 (explaining its holding did not “call into question

conventional surveillance techniques and tools, such as” cameras because “when considering new innovations in airplanes or radios, the Court must tread carefully . . . to ensure we do not embarrass the future” (citation modified)).

The purpose of the County’s actions is significant as well because it provides an independent reason why the exclusionary rule should not be applied here. The County took these pictures to determine whether Appellant was complying with the Ordinance after a preliminary injunction had been issued. The County was not acting pursuant to a criminal investigation or otherwise “engaged in the often competitive enterprise of ferreting out crime.” *United States v. Leon*, 468 U.S. 897, 914 (1984). That distinction matters because the purpose of the exclusionary rule is to deter unlawful conduct when gathering evidence for a criminal prosecution. *See Pennsylvania Bd. Of Prob. & Parole v. Scott*, 524 U.S. 357, 368–69 (1998) (reasoning the exclusionary rule provides only minimal deterrence in non-criminal proceedings). Moreover, an officer deploying a drone to ensure zoning compliance certainly is not engaged in the kind of deliberate, reckless, grossly negligent, or otherwise unlawful disregard for the Fourth Amendment that the exclusionary rule is designed to deter.

Even if the Court were to somehow find a Fourth Amendment violation in this record, reversal would not follow. The circuit court’s ruling does not solely rely on drone pictures. Rather, the remaining evidence independently establishes that Appellant was running a trucking business from the Property in violation of the Ordinance.

First, as previously discussed, Appellant’s deposition testimony describes the Property as the base of operations for his trucking operation. (App. Dep. 18–19, 28–29, 53). Second, in his affidavit, Appellant conceded that regular trucking operations were occurring on the property after

the preliminary injunction was issued, as he stated: “Trucks arrive on the property on Friday and leave by Sunday as part of regular business operations.” (App. Affidavit ¶ 6).

Third, the Sumter County Zoning Inspector provided an affidavit stating she had personally observed Appellant’s attempts to operate a trucking business on the Property. (McLellan Affidavit ¶¶ 6, 9). The Zoning Inspector further testified that Appellant had never been given permission to operate a trucking business on the Property. (McLellan Affidavit ¶ 8).

Fourth, the County Zoning Administrator provided an affidavit stating Appellant’s use of the Property was not a permitted use under either the SIC or NAICS codes. (Derwort Affidavit ¶¶ 7–11). Moreover, in his deposition, the Zoning Administrator testified that Appellant’s use of the Property was a violation of the Ordinance because Appellant had not complied with the conditional use process. (Derwort Dep. 24: 3–5).

At the summary judgment hearing, the following unchallenged evidence was presented to the circuit court: (1) Appellant’s testimony that he owns a company that offers trucking services to clients; (2) Appellant’s testimony that he owned four semi-trucks and trailers and that the trucks were stored and dispatched from the Property to pick up freight from Charleston; (3) Appellant’s testimony that he “works” on the trucks on the Property; (4) Appellant’s testimony that he had other drivers working and driving the trucks for him; (5) filings with the South Carolina Secretary of State showing the Property was listed as the business address for Appellant’s trucking company; (6) USDOT registration listing the Property as the physical address for the trucking company; (7) photographs taken at various times between 2022 and 2024 showing a trucking operation on the Property; (8) the affidavit of the Sumter County Zoning Inspector indicating trucking operations have been observed on the property on multiple occasions and that the use of the Property is not a permitted use under the Ordinance; and (9) the affidavit of the County Zoning Administrator

demonstrating Appellant's use of the property is not permitted under the Ordinance. (MSJ Order 6–8).

Appellant provided no evidence, beyond his own arguments, to refute the unchallenged evidence. Thus, even when disregarding the photographs, the unchallenged evidence provides independent basis for the circuit court's ruling. If there were any errors concerning the photographs, this error was harmless. *See Baker*, 279 S.C. at 583, 310 S.E.2d at 435 (applying the harmless error doctrine to the grant of summary judgment and noting “[a]n error not shown to be prejudicial does not constitute grounds for reversal”).

II. The circuit court did not err in granting injunctive relief because Appellant was violating the ordinance.

Appellant also challenges the circuit court's decision to grant injunctive relief. (App. Initial. Br. 9). The circuit court correctly found the Ordinance applies to this dispute and that Appellant violated the Ordinance. Nothing in the record indicates otherwise, and nothing else is needed to support the circuit court's decision to grant injunctive relief. This court should therefore affirm.

Appellant properly concedes his argument as to the circuit court's decision to grant injunctive relief turns on the merits of his challenge to summary judgment. Because Appellant failed to demonstrate reversible error in the grant of summary judgment, the Court can summarily affirm.

In addition, Appellant abandoned this argument by failing to cite any authority to support his argument. *See Hunt v. Forestry Com'm*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004) (“Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.”).

Even if properly before the Court, this argument fails on the merits.

Generally, a party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. *See Scratch Golf Co. v. Dunes W. Res. Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004) (establishing the elements for injunctive relief). However, our Supreme Court has established a lower standard for zoning purposes when the injunction is authorized by statute and the party seeking the injunction is a governmental entity. *See City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 531 S.E.2d 518 (2000).

When authorized by statute, a governmental entity is entitled to an injunction for a zoning violation when it shows: “(1) that it has an ordinance covering the situation; and (2) that there is a violation of that ordinance.” *Id.* at 282, 531 S.E.2d at 521 (citing 42 Am.Jur.2d *Injunctions* § 38 (1969)). In those circumstances, “no showing of irreparable harm need be made by the [governmental entity] seeking the injunction, nor must the court consider whether the injunction is in the public interest.” 42 Am.Jur.2d, *Injunctions* § 23, at 595 (2000); *Pick-A-Flick Video, Inc.*, 340 S.C. at 284, 531 S.E.2d at 521 (holding a municipality need not show negative secondary effects in order to enforce zoning provisions).

Subsection 6-29-950(A) of the South Carolina Code authorizes the County to seek injunctive relief for the violation of the Ordinance. S.C. Code Ann. §6-29-950(A) (“In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion,

maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.”). The County’s authority to seek an injunction therefore cannot be disputed.

Here, the County satisfies both injunctive relief requirements.

It is undisputed that the Ordinance covers this factual situation as Appellant has never asserted the Ordinance is inapplicable to this dispute. Even if that was in dispute, the circuit court correctly determined the Ordinance applies.

Pursuant to the authority granted by the General Assembly to cities and counties, the County has enacted legislation to address zoning and development within Sumter County. *See* S.C. Code Ann. § 6-29-710. To this end, the County enacted the Ordinance “to protect the health, safety, and general welfare, while allowing for the cost saving efficiencies, through the proper subdivision of land and the creation of zoning districts.” Ordinance § 1.a.2. To implement this purpose, the County has established various zoning and development districts, including the AC District. The AC District was established for the purpose of protecting and preserving areas “uniquely suited to agricultural use.” Ordinance § 3.n.1.

The Ordinance plainly regulates the use of land and expressly establishes the permitted and prohibited uses within the AC district. The Property is unquestionably located within the AC District. The Ordinance therefore covers this dispute.

Second, the record conclusively establishes a violation of the Ordinance. As discussed above, Appellant’s testimony establishes that the Property served as the base of operations for his trucking company as he stored, maintained, repaired, washed, and dispatched commercial trucks from the Property. Because trucking services are prohibited under the Ordinance, the undisputed conduct violated the Ordinance.

Therefore, the circuit court did not abuse its discretion when granting the County’s request for injunctive relief. *See Morris v. BB&T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023) (“Thus, when a trial court’s . . . thought process of applying sound principles of law to the court’s view of the facts and circumstances is evidence in the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court’s exercise of discretion, even when the judges on the appellate court might have made the decision differently.”).

Accordingly, this Court should affirm because the record shows the circuit court diligently analyzed the issues when concluding the uncontradicted evidence showed Appellant was violating the Ordinance.

CONCLUSION

For the foregoing reasons, the Court should affirm the circuit court’s order.

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