

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2026-001955

Sunset Lodge, LLC, and Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust, and M. Baron Stanton, Plaintiffs,

v.

Town of Pawleys Island, Defendant,

Of which Sunset Lodge, LLC and Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust are the Petitioners-Respondents,

and

Town of Pawleys Island is the..... Respondent-Petitioner.

**TOWN OF PAWLEYS ISLAND'S RETURN TO PETITIONERS-RESPONDENTS'
MOTION AND PETITION FOR MANDAMUS AND CERTIORARI**

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INTRODUCTION

Respondent-Petitioner Town of Pawleys Island (“Town”) hereby submits its Return to the Petitioners-Respondents Sunset Lodge, LLC and Franklin D. Beattie, as trustee of The Franklin D. Beattie Preservation Trust (“Landowners”)’s *Motion and Petition for Mandamus and Certiorari*. Town does not stipulate to the Statement of the Case included in Landowners’ Petition, and instead refers to the Town’s own Petition for Writ of Certiorari for an accurate statement of the case. While the Town has also petitioned this Court to review and correct errors made by the Court of Appeals, the Town asserts that the Landowners’ petition has not identified any errors justifying any further increase in the fee award.

ARGUMENTS

I. The Court of Appeals did not err in issuing an unpublished opinion.

Landowners misconstrue the procedural rules governing unpublished memorandum opinions. Rule 220(a), SCACR, plainly states that “[t]he appellate court shall make its decisions in writing by published opinions or memorandum opinions . . . memorandum opinions shall not be published in the official reports and shall be of no precedential value.” Nowhere does that rule or any other procedural or statutory provision prohibit the Court of Appeals from issuing an unpublished memorandum opinion. Rule 220(b)(1) does not limit issuance of unpublished memorandum opinions, but instead provides that only the Supreme Court may do so without addressing “every point distinctly stated in the case which is necessary to the decision of the appeal.”¹ This straightforward application of the plain language of the rule is supported by the Supreme Court order cited by Landowners, In re Memorandum Decisions by Ct. of Appeals, 322

¹ The exception to this requirement is that “[t]he Court of Appeals need not address a point which is manifestly without merit.” Rule 220(b)(2), SCACR.

S.C. 53, 471 S.E.2d 456 (1993), which acknowledges in its first sentence “the authority of the South Carolina Court of Appeals to issue memorandum opinions”.

The distinction, as the Supreme Court explained, is that while both courts are authorized to issue unpublished memorandum opinions, the Supreme Court has additional authority to “issue memorandum opinions *which do not give a reason for each issue involved in the appeal*”. *Id.* at 54, 471 S.E.2d 456, 457 (emphasis added). The Supreme Court went on to explain that it nonetheless usually addresses each issue even when not required to do so, and found that, for purposes of the Court of Appeals, the Supreme Court’s standard memorandum opinion format is sufficient to satisfy the requirement that every point be addressed. Likewise, the other appellate opinion referenced by Landowners simply does not, as they claim, question the authority of the Court of Appeals to issue unpublished decisions. See Lanham v. Blue Cross & Blue Shield of S.C., Inc., 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000), *aff’d as modified*, 349 S.C. 356, 563 S.E.2d 331 (2002). The Court of Appeals did not err in issuing an unpublished opinion in this matter.

Likewise, the Landowners’ petition for mandamus should be denied because, as stated herein, the Landowners have not identified any ministerial legal duty that the Court of Appeals has failed or refused to perform. See *Redmond v. Lexington Cty. Sch. Dist. No. Four*, 314 S.C. 431, 437, 445 S.E.2d 441, 445 (1994) (“To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy.”).

II. The Court of Appeals did not err by placing what Landowners argue was insufficient focus on the inclusion of public access in the easements.

Landowners seem to claim in their second argument that the Court of Appeals erred by limiting its statements about the proposed easements to characterizations of “overly broad public

access” instead of focusing on the question of whether the easements should have included any public access at all. Landowners do not explain what if anything this has to do with their argument that they are entitled to additional attorney fees, and for good reason. This question was not addressed by the circuit court on summary judgment or in consideration of the fee petition, was not developed or included in the record, and does not have any bearing on review of the fee award. As argued in the Town’s petition for writ of certiorari, it is not clear how the scope of the proposed easements made the litigation more difficult, time-intensive, or costly – for consideration of the fee award, it is a given that the Landowners found the easement objectionable, and the question is whether their claimed attorney time seeking to prove their case was reasonable. Here, the Landowners appear to be asking the Supreme Court to look even further into the substantive question of their objection to the easements. This is outside the scope of review on review of the fee petition and has no bearing on the question of whether either lower court erred in addressing the fee award.

III. The Court of Appeals did not fail to address the issues raised by Landowners on appeal.

While the Town separately contends in its Petition that the decision of the Court of Appeals to increase the fee award was unsupported and in error, the Court of Appeals did address the issues raised by Landowners. Rule 220(b), SCACR, provides that “[i]n 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.” This rule does not entitle Landowners to an appellate decision providing granular analysis of every single argument and assertion they made. Instead, it is sufficient for the Court of Appeals to “set forth each issue and [give] the case or cases which support its decision.” In re Memorandum Decisions by Ct. of Appeals, 322 S.C. 53, 54, 471 S.E.2d 456, 457 (1993).

In consideration of whether the Court of Appeals addressed the issues raised by Landowners, a relevant factor is the sprawling manner in which the Landowners presented their arguments. The Landowners' *Appellants' Brief*, 50 pages in length including approximately 13 pages worth of single-spaced footnotes, lists 18 arguments that it labels as "issues on appeal." (Appellants' Brief p.1 – 3). The brief also went on to list in a footnote 43 "additional errors" that Landowners contend the circuit court made in reviewing the fee award (Appellants' Brief p.41 – 43, fn.20).

This fee review matter did not present 18 issues on appeal and 43 "additional errors", no matter how many ways the Landowners have stated and restated their arguments. Contrary to the procedural requirement that "[t]he brief shall be divided into as many parts as there are issues to be argued," Rule 208(b)(1)(E), SCACR, the Landowners themselves did not even attempt to structure their arguments around the 18 purported "issues on appeal." This demonstrates that, in now arguing that the Court of Appeals was required to address in granular fashion each and every argument they made, the Landowners are asking the appellate courts to do something that their own briefs did not do: organize each of the 18 listed "issues on appeal" into distinct, clearly stated arguments and conclusions.

The Court addressed all issues that were fairly raised by Landowners and necessary for disposition of the appeal. Furthermore, to the extent that the Court may not have addressed every single specific assertion, "[t]he Court of Appeals need not address a point which is manifestly without merit." Rule 220(b)(2), SCACR.

IV. The Court of Appeals did not err by declining to further increase the award of fees and costs.

The Court of Appeals did not err in declining to further increase the award of fees and costs. As argued in the Town's *Petition for a Writ of Certiorari*, the error of the Court of Appeals was in

setting aside the required deference to the circuit court and increasing the award by any amount in the first place. Landowners had the burden to prove to the circuit court the reasonableness of their claimed attorney time and fees, and both that court and the Court of Appeals agreed that Landowners did not come close to doing so. The key question on the fee award is not, as Landowners have continued to argue, the “actual” attorney time worked, but instead the “*reasonable* costs and litigation expenses incurred[.]” S.C. Code Ann. § 28-2-510(A) (emphasis added).

The Court of Appeals was not required to “enhance” the lodestar hourly fee rate to some unspecified amount that would satisfy the Landowners, was not required to use Landowners’ claim of actual attorney time as the starting point for determination of reasonableness, and was not required to address the issue of fees on appeal. As the circuit court and Court of Appeals seem to agree, the Landowner claim did not provide even a plausible baseline to begin a review of the fee. The length of the record on appeal is not evidence, as Landowners argue, that the time spent was necessary or reasonable. Instead, the excessive briefing and related documents in the record demonstrate precisely the opposite, that much of the Landowners approach to the litigation has been unreasonable.

Landowners assert, with no citation to the record (consistent with virtually all of their arguments), that the Town’s attorney spent more than 250 hours “in order to lose the case.” (Petition p.21). In fact, the record is completely silent as to the hours worked by legal counsel for the Town. It is true, for example, that the Landowners’ approach to the litigation did require the Town to devote time to unusual matters such as a protracted dispute over whether the Landowners would produce any billing records in support of their massive fee request. However, this merely reflects the Town’s necessary response to the Landowners’ unreasonable approach to the fee dispute.

CONCLUSION

For the reasons set forth above, Respondent-Petitioner Town of Pawleys Island respectfully asks that the Court deny the Landowner's Motion and Petition for Mandamus and Writ of Certiorari, and instead grant the Town's Petition for a Writ of Certiorari to review and correct the errors identified therein.

Respectfully submitted,

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