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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2026-000840

Reginald P. Johnston and Shonda D. Johnston, Appellants,

v.

City of Walterboro, Respondent.

INITIAL BRIEF OF RESPONDENT

/s/ Peden Brown McLeod, Jr.
Peden Brown McLeod, Jr., Bar No. 74967
MCLEOD FRASER & CONE, LLC
111 East Washington Street
Walterboro, SC 29488
(843) 549-251
Attorneys for Respondent

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. DID APPELLANTS PRESERVED A BASIS FOR REVERSAL OF THE CIRCUIT COURT'S ORDER GRANTING SUMMARY JUDGMENT?

II. DID APPELLANTS ABANDON THE ISSUES IDENTIFIED IN THEIR AMENDED STATEMENT OF ISSUES BY FAILING TO PRESENT ARGUMENT DIRECTED TO THOSE ISSUES?

III. ASSUMING ARGUENDO THAT APPELLANTS' ISSUES ARE PRESERVED AND PROPERLY PRESENTED, DID THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT?

STATEMENT OF THE CASE

Appellants Reginald P. Johnston and Shonda D. Johnston filed this action in the Colleton County Court of Common Pleas against Respondent City of Walterboro concerning the extension of water and sewer service to Appellants' property located in Walterboro, South Carolina. Appellants asserted causes of action for declaratory judgment, breach of contract, gross negligence, and inverse condemnation. Respondent answered the complaint denying Appellants' allegations and causes of action and asserting that the applicable City ordinances required Appellants to bear the cost of extending the water line necessary to serve their property.

Respondent moved for summary judgment on the issue of whether Appellants qualified as developers under the applicable City ordinances. The motion for summary judgment was heard before the Honorable Marvin H. Dukes, III, on March 4, 2026. Respondent sought summary judgment as to all of Appellants' causes of action. Appellants, who were represented by counsel at the hearing, opposed the motion and presented argument and supporting materials. At the conclusion of the hearing, the Court took the matter under advisement.

The Court of Common Pleas entered an Order granting Respondent's motion for summary judgment on March 9, 2026. The Court determined that Appellants were responsible for the costs associated with extending the water line to their property and granted Respondent summary judgment on Appellants' claims for breach of contract, gross negligence, and inverse condemnation.

Appellants subsequently filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. Appellants did not provide the Circuit Court Judge with a copy of the filed motion within ten days as required by Rule 59(g), SCRCP. Appellants thereafter filed this appeal. On May 5, 2026, the Court issued an order noting a lack of jurisdiction over the Motion to Reconsider.

STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

FACTS

This action arises out of a dispute concerning the cost of extending a City of Walterboro water line to Shonda Johnston's property located in an existing subdivision within the City of Walterboro. Ms. Johnston's property was transferred to her from her father.

Prior to construction, Appellants entered into a design contract for the project in March 2020. The contract described the project as "project development." Plans prepared in connection with the project provided that the contractor was responsible for locating and identifying utilities. Appellants thereafter entered into a contract with a contractor to construct the duplex in September 2021, which included connecting the property to City water and sewer.

Following issuance of the building permit, Appellants' contractor and the City's Utility Director met at the property. On February 17, 2022, the Utility Director provided Appellants' contractor with the cost of extending the water line to the property, together with the cost of two service connections. Appellant Shonda Johnston subsequently testified that her contractor informed her of the cost of extending the water line and the service connections at approximately the same time. Construction had not proceeded to vertical construction when Appellants learned of these costs.

By February 28, 2022, Appellants were aware that the City required payment of the water-line extension and connection costs, as evidenced by correspondence sent by Reginald Johnston to an attorney concerning the City's requirement. Thereafter, on April 11, 2022, Appellants submitted a water tap application and paid the applicable tap fees. The dispute between the parties concerns the additional cost of extending the water line necessary to serve Appellants' property.

The City's ordinance provides that it is the responsibility of a developer to bear the cost of any main-line extension necessary to serve proposed property. City of Walterboro Code of Ordinances §34-187. The City's Unified Development Ordinance defines "development" to include the construction of any building or structure. City of Walterboro Unified Development Ordinance §A.4. It is undisputed that Appellants constructed a duplex on the subject property. The Circuit Court determined that construction of the duplex fell within the City's definition of development and that Appellants were therefore responsible for the cost of the necessary water-line extension.

Alternatively, Respondent argued that if Appellants were not considered developers under the City's ordinance, the ordinance would be silent as to responsibility for the extension cost and S.C. Code Ann. § 5-31-1510 would apply. At the summary judgment hearing, Appellants' counsel agreed that the analysis would turn to State law where the City's ordinances were silent.

Section 5-31-1510 provides for the extension of municipal water and sewer service upon the written request of a property owner agreeing to pay the cost of the extension. The Circuit Court accepted this argument as an independent basis for concluding that Appellants were responsible for the water-line extension cost.

With respect to Appellants' breach of contract claim, Appellant Shonda Johnston testified that she did not have an agreement with the City concerning development of the property. Appellants instead based their contract claim upon the payment of taxes, deposits, application fees, and tap fees. Respondent argued that these payments constituted regulatory fees rather than bargained-for consideration creating a contractual relationship. The Circuit Court agreed and determined that Appellants failed to establish the existence of a contract with Respondent.

Appellants' gross negligence claim arose from the City's interpretation and application of its ordinances. The Circuit Court determined that the claim was barred by S.C. Code Ann. § 15-78-60(4), which provides immunity under the South Carolina Tort Claims Act for losses resulting from the adoption, enforcement, or compliance with laws and regulations.

Finally, Appellants alleged that the City's refusal to extend water service without payment constituted inverse condemnation. During the summary judgment hearing; however, the Circuit Court specifically inquired whether there was any evidence that the City would have refused to provide service if the required installation cost had been paid. Both Respondent's counsel and Appellants' counsel answered that there was not. The dispute therefore concerned responsibility for the extension cost rather than a refusal by the City to provide water service under any circumstances. The Circuit Court ultimately determined that the City had neither taken possession of nor exercised dominion over Appellants' property and that Appellants remained free to develop the property upon compliance with the applicable ordinances and statutes.

ARGUMENTS

I. DID APPELLANTS PRESERVED A BASIS FOR REVERSAL OF THE CIRCUIT COURT'S ORDER GRANTING SUMMARY JUDGMENT?

It is well established that an issue must be raised to and ruled upon by the trial court to be preserved for appellate review. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). More specifically, the Supreme Court has explained that the losing party generally must both present the issue and argument to the lower court and obtain a ruling before an appellate court will review it. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). If an issue is raised but the trial court fails to rule upon it, the losing party must file an appropriate motion to alter or amend the judgment and obtain a ruling to preserve the issue for appellate review. Id.; see also, Elam v. South Carolina Department of Transportation, 361 S.C. 9,

17, 602 S.E.2d 772, 776 (2004)(Appellate courts will not consider issues not raised to and ruled upon below.).

Here, Appellants' amended Statement of Issues identifies three purported errors: (1) consideration of an allegedly unauthenticated statement; (2) an alleged misinterpretation of an unidentified statute; and (3) an alleged failure to address a "counterclaim." The record of the summary judgment hearing demonstrates that Issues One and Three were not presented to or ruled upon by the circuit court, while Issue Two mischaracterizes both the proceedings below and the independent grounds upon which the circuit court entered judgment.

A. Appellants' first issue concerning authentication was neither raised nor ruled upon by the Trial Court.

Appellants first contend the circuit court erred by admitting or considering a statement that allegedly was not authenticated. The transcript; however, reflects no objection by Appellants based upon authentication, admissibility, or the appellate rule now cited by Appellants.

To the contrary, Appellants' counsel affirmatively advised the circuit court that Appellants had filed a memorandum with exhibits and repeatedly requested that the court review and consider those materials. Counsel specifically relied upon Exhibits 1, 2, and 4 in opposing summary judgment. The circuit court ultimately took the matter under advisement so that the parties' written submissions could be reviewed.

Nothing in the transcript reflects that Appellants objected to any evidence on authentication grounds or requested a ruling concerning authentication. The issue therefore was neither raised to nor ruled upon by the circuit court and is not preserved for appellate review. Wilder, 330 S.C. at 76, 497 S.E.2d at 733; I'On, 338 S.C. at 422, 526 S.E.2d at 724.

Moreover, Appellants' citation to Rule 405, SCACR, does not cure the preservation defect. Appellants cannot transform an evidentiary objection never presented below into an appellate issue after an adverse judgment.

B. Appellants' second issue fails to challenge both independent grounds supporting the circuit court's declaratory judgment.

Appellants next vaguely ask whether the circuit court "misinterpret[ed] the statute at issue." The circuit court's order, however, rested upon two independent grounds for determining that Appellants were responsible for the cost of extending the water line.

First, the circuit court construed the City's ordinances and found it undisputed that Appellants constructed a building on the property. Because the Unified Development Ordinance defines "development" to include "[t]he construction of any building or structure," the court concluded Appellants' construction constituted development and that the City's ordinance placed the cost of the water-line extension upon them. UDO §A.4; Code of Ordinances §34-187.

Second—and independently—the circuit court held that even if the City's ordinance did not apply, S.C. Code Ann. §5-31-1510 provides for an extension of a municipal waterline upon a written request of any property owner to extend the waterline while agreeing to pay the costs thereof. The order expressly characterized §5-31-1510 as an independent basis for its ruling.

The hearing transcript confirms this alternative statutory ground was squarely presented to Appellants. Respondent argued that if Appellants were correct that the City's developer ordinance did not apply to them, the ordinance would be silent and §5-31-1510 would govern. Appellants' counsel then expressly agreed that where the City's ordinances are silent, the analysis would "fall over into the state Statutes."

Thus, there was no surprise and no deprivation of an opportunity to respond. The statutory alternative was argued at the hearing, Appellants responded to it, and Judge Dukes expressly adopted it as an independent ground for judgment.

Under South Carolina's two-issue rule, "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." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). The rule applies to orders of trial courts, not merely general jury verdicts. Id.; See also Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 451, 814 S.E.2d 643, 653–54 (Ct. App. 2018).

Accordingly, to the extent Appellants challenge only one of the independent grounds supporting the declaratory judgment, the unchallenged ground requires affirmance.

C. Appellants' third issue—that the circuit court failed to address a "counterclaim"—is contradicted by the record and is unpreserved.

Appellants' third issue asks whether the circuit court improperly granted summary judgment without addressing Appellants' "counterclaim." Appellants were the plaintiffs below, and neither their amended brief nor the record identified thus far establishes what "counterclaim" they contend remained unresolved.

More importantly, the circuit court's order expressly identifies the four causes of action asserted by Appellants: declaratory judgment, breach of contract, gross negligence, and inverse condemnation. The order separately adjudicates those claims and concludes that Respondent is entitled to declaratory judgment and summary judgment on each of Appellants' claims.

The hearing transcript likewise demonstrates that all four claims were before the court. Respondent expressly sought summary judgment on all claims, including declaratory judgment,

breach of contract, gross negligence, and inverse condemnation. Appellants' counsel responded on the merits and did not identify an additional claim that Respondent's motion failed to address.

If Appellants nevertheless believed the March 9, 2026 Order failed to adjudicate a claim, it was incumbent upon them to bring that alleged omission to the circuit court's attention and obtain a ruling. I'On, 338 S.C. at 422, 526 S.E.2d at 724. An appellate court may affirm upon any ground appearing in the record. Rule 220(c), SCACR. However, it may not reverse upon an issue the losing party failed to present to and obtain a ruling from the trial court. I'On, 338 S.C. at 422, 526 S.E.2d at 724. Issue Three therefore provides no basis for reversal.

D. Appellants' Rule 59(e) motion does not cure their preservation deficiencies.

Following entry of summary judgment, Appellants filed a motion denominated as a motion pursuant to Rule 59(e), SCRCP. However, Appellants failed to provide Judge Dukes a copy of the filed motion within ten days as required by Rule 59(g), SCRCP, and and the court subsequently declined to consider the motion for lack of jurisdiction in its May 5, 2026 Order.

Rule 59(g) provides that a party filing a written Rule 59 motion "shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." The purpose of subsection (g) is to ensure that the trial judge is promptly notified of the filing.

South Carolina Supreme Court has noted that "We have previously held that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline." Overland, Inc. v. Nance, 423 S.C. 253, 256, 815 S.E.2d 431 (2018). "Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Russell v. Wachovia Bank, N.A., 370 S.C. 5, 20, 633 S.E.2d 722 (2006).

Appellants failed to provide Judge Dukes a copy of the motion as required by Rule 59(g), SCRCP. The court's May 5, 2026 Order declined to consider the motion for lack of jurisdiction.

Appellants therefore did not obtain a ruling on the additional issues they now seek to raise. See I'On, 338 S.C. at 422, 526 S.E.2d at 724.

E. Appellants' Rule 60(b)(3) allegations are not properly before this Court.

Appellants' amended brief continues to accuse Respondent's counsel of misrepresentation and invokes Rule 60(b)(3), SCRCP. Yet the post-judgment motion reflected in the record was brought under Rule 59(e), not Rule 60(b)(3), and there is no circuit-court order granting or denying relief under Rule 60(b)(3).

Consequently, there is no Rule 60(b)(3) ruling for this Court to review. To the extent Appellants attempt to obtain Rule 60(b)(3) relief for the first time on appeal, the issue is unpreserved. See Wilder, 330 S.C. at 76, 497 S.E.2d at 733; I'On, 338 S.C. at 422, 526 S.E.2d at 724.

Moreover, the allegation that Respondent somehow misled the circuit court concerning §5-31-1510 is affirmatively contradicted by the hearing transcript. Respondent openly presented the statute and its alternative application during oral argument, and Appellants' counsel responded to that argument. Appellants' counsel agreed with the general proposition that state law would govern where the municipal ordinances were silent. The circuit court then expressly identified the argument and Appellants' counsel's concession in its written Order.

There is therefore no record basis for characterizing the circuit court's consideration of §5-31-1510 as the product of a concealed or misleading argument.

II. DID APPELLANTS ABANDON THE ISSUES IDENTIFIED IN THEIR AMENDED STATEMENT OF ISSUES BY FAILING TO PRESENT ARGUMENT DIRECTED TO THOSE ISSUES?

Rule 208(b)(1)(B), SCACR, requires a concise and direct statement of each issue presented for review. Rule 208(b)(1)(E), SCACR, requires an appellant's brief to "be divided

into as many parts as there are issues to be argued" and requires each issue to be followed by "discussion and citations of authority."

The amended brief identifies three issues. Its Argument section; however, is organized under four different headings—Declaratory Judgment, Breach of Contract, Gross Negligence, and Inverse Condemnation—and does not develop arguments corresponding to the three issues actually identified for appellate review.

South Carolina courts consistently treat an appellate argument as abandoned when it is unsupported by authority or merely conclusory. Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); Equivest Fin., LLC v. Ravenel, 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018).

Appellants' amended brief therefore does not merely suffer from a technical formatting defect. It fails to provide developed legal argument demonstrating why any of the three rulings identified in the Statement of Issues constitutes reversible error. Accordingly, Appellants' Issues on Appeal have been abandoned.

III. ASSUMING ARGUENDO THAT APPELLANTS' ISSUES ARE PRESERVED AND PROPERLY PRESENTED, DID THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT?

A. The circuit court correctly determined Appellants are responsible for the water-line extension.

Construction of a municipal ordinance presents a question of law. Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015). "[I]t is well-settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." Beaufort County v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011).

The circuit court found it undisputed that Appellants constructed a building on the subject property and that the City' s Unified Development Ordinance defines "development" to include "[t]he construction of any building or structure." From those undisputed facts, the court concluded that the construction constituted development and that the City's ordinance placed responsibility for the necessary main-line extension upon Appellants. City of Walterboro Unified Development Ordinance § A.4; City of Walterboro Code of Ordinances § 34-187.

Appellants' contention that they are not professional real-estate developers does not create a genuine issue of material fact. The operative question is the meaning of the ordinance, not Appellants' occupations or their subjective characterization of themselves.

In any event, §5-31-1510 independently supports the judgment. South Carolina Code Section 5-31-1510 states:

> Upon the written request of **any property owner requesting the city or town to extend to him water and sewer service and agreeing to pay the cost thereof** the city or town may provide such service and levy an assessment against the property of the owner so requesting such service for the costs thereof. (Emphasis added).

The statute provides for extension of municipal water and sewer service upon the written request of a property owner who agrees to pay the cost. The circuit court expressly relied upon this statute as an independent basis for determining that Appellants were responsible for the extension cost.

The Trial Court found that Appellants fell within the terms of the City Ordiance and alternatively found that the Section 5-31-1510 would apply if the City Ordiance did not which provides for an extension upon a property owner's written request and agreeing to pay for the extension of the waterline.

B. The breach-of-contract claim fails because Appellants established no contract.

It is elementary that a contract must exist for there to be a claim for breach of contract. Tidewater Supply Co., Inc. v. Industrial Electric Co., 253 S.C. 483, 171 S.E.2d 607 (1969).

The circuit court found that payment of regulatory tap and administrative fees did not constitute bargained-for consideration creating a contract with the City to extend the waterline to the property. At the hearing, Respondent likewise argued that the tap fees were regulatory charges rather than bargained-for contractual consideration.

Absent a contract, there can be no breach-of-contract claim. The circuit court therefore properly entered summary judgment on this cause of action.

Appellants now argue that the issuance of a building permit firmly locks in regulations, codes and fee schedules; however, this was not raised below at the hearing.

C. The gross-negligence claim is barred by the South Carolina Tort Claims Act.

Appellants' gross-negligence theory arises from the City's interpretation and application of its ordinances. The circuit court held such a claim was barred by S.C. Code Ann. §15-78-60(4), See Repko v. County of Georgetown, 424 S.C. 494, 814 S.E.2d 743 (2018).

Appellants' amended brief does not demonstrate error in that statutory immunity ruling. Accordingly, summary judgment on gross negligence should be affirmed.

D. The inverse-condemnation claim fails as a matter of law.

South Carolina courts have held that enforcement of a government regulation will usually affect a taking under inverse condemnation when the regulation denies all economically beneficial or productive use of the land. Hardin v. S.C. Dep't of Transp., 371 S.C. 598, 641 S.E.2d 437 (2007). The circuit court identified the required elements of inverse condemnation, including a taking for public use with some degree of permanence. It found no evidence the City

took possession of or exercised dominion over Appellants' property and found Appellants remained free to develop the property upon compliance with applicable law.

A regulatory inverse-condemnation claim requires affirmative governmental conduct that effects a taking. Neither physical appropriation nor a taking for public use is a necessary component of a regulatory taking, and permanence is not a required element. Byrd v. City of Hartsville, 365 S.C. 650, 657, 620 S.E.2d 76, 79 (2005). Appellants therefore must establish that the City's conduct effected a taking; the absence of physical possession alone does not resolve that inquiry. Here, the circuit court found that Appellants remained free to develop their property upon compliance with the applicable ordinances and statutes.

The hearing record makes the deficiency even clearer. Judge Dukes specifically asked whether there was evidence that the City would have refused water service if the installation fee had been paid. Both parties answered no. The transcript therefore establishes that the City's position was not that Appellants could never obtain water service; the dispute concerned who was responsible for paying the extension cost.

The hearing testimony supports the City's position that the dispute concerned responsibility for the extension cost, rather than an absolute prohibition on development. Appellants have identified no evidence demonstrating that this requirement effected a compensable taking. Accordingly, the circuit court properly granted summary judgment on the inverse-condemnation claim.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the circuit court's March 9, 2026 Order granting summary judgment. Appellants have failed to present a preserved and properly developed basis for reversal. Alternatively, assuming arguendo

that any of Appellants' issues are properly before this Court, each fails on the merits and the circuit court's judgment should be affirmed.