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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Hon. David P. Caraker, Jr. Circuit Court Judge

Appellate Case No. 2025-001453
Trial Court Case No. 2024-CP-37-00195

Christopher A. Pierce.....Appellant,

v.

Foxwood Hills Property Owners Association.....Respondent.

INITIAL BRIEF OF RESPONDENT FOXWOOD HILLS PROPERTY OWNERS' ASSOCIATION

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly grant summary judgment to the Respondent?

2. The trial court's order of February 19, 2025, is not appealable.

STATEMENT OF THE CASE

Respondent is a property owners association responsible for operating and maintaining a residential development known as Foxwood Hills located on Lake Hartwell in Oconee County, South Carolina, comprised of approximately 4100 lots currently owned by over 3200 owners of record. Respondent's duties include the maintenance, operation and management of over forty miles of roadways and certain real estate and amenities, including a clubhouse, restaurant, a pool, tennis courts, a parking area, docks, substantial common areas.

On March 14, 2024, Appellant filed this action in the Court of Common Pleas for Oconee County seeking a declaration from the Court to the effect that Respondent has failed to provide documents and/or records of the Respondent to the Appellant. Respondent has granted the Appellant's requests for inspection of the business records of the Respondent on numerous occasions. The only documents that the Respondent has not made available to the Appellant are the email addresses and phone numbers of the individual members of Respondent due to privacy concerns and at the requests of other property owners.

Appellant filed a motion for summary judgment on November 16, 2024, which was heard by the Court on January 29, 2025. Respondent filed a response to the Appellant's motion and sought an order from the Court declaring that the personal information of the Foxwood members consisting of the members' email addresses and phone numbers was not to be divulged to the Appellant as is the Respondent's right under South Carolina Code §33-31-1604 (1994). Respondent has previously made available the member list and mailing addresses for the members. The Court, by order of The Hon. Judge Lawton McIntosh denied Appellant's motion for summary judgment in an Order dated February 19, 2025. In that Order, the Court ruled that the email

addresses and telephone numbers of the members of the Foxwood community were not to be made available to the Appellant and that the access of the member lists and their mailing addresses would be sufficient.

On April 14, 2025, Respondent filed its motion for summary judgment in the action. The motion hearing was held on May 14, 2025, with the Hon. David P. Caraker, Jr. presiding. Judge Caraker granted the Respondent's motion for summary judgment and issued his Order on June 13, 2025, and this appeal followed.

STANDARD OF REVIEW

The standard of review in a summary judgment case is *de novo. Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 611 S.E.2d 305 (Ct. App. 2005).

Summary judgment is appropriate where no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Fender & Latham, Inc. v. First Union Nat'l Bank of S.C.*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App.1994); *The Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003)

"The purpose of summary judgment is to expedite dispositions 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). A motion for 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 a judgment as a matter of law." Standard Fire v. Marine Contracting, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990); Rule

56(c), SCRCP. If the non-moving party has not shown a genuine issue of material fact, "summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP. The "mere scintilla" standard does not apply under rule 56(c) and the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438, (Ct. App. 2003) (citing Rule 56(c), SCRCP; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); P*eterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* To avoid the granting of a Motion for Summary Judgment by Plaintiff, "[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores*, 315 S.C. 344, 346, 433 S.E.2d 905, 906, (Ct. App. 1993) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

ARGUMENT

1. The trial court properly granted summary judgment to the Respondent.

The Appellant filed his own motion for summary judgment in this case on November 16, 2024, and in that motion Appellant stated "...that there is no issue of genuine material fact in

dispute related to the case." (Appellant's motion for summary judgment, P. 1, Line 4). Therefore, the Appellant admitted there are no issues of material fact to be tried in the case. The Respondent agrees with the Appellant. "Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law" *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016). As both the Appellant and the Respondent admit in their respective motions for summary judgment that there are no issues of material fact the Respondent's motion for summary judgment was appropriate.

Appellant's complaint filed in this action on March 14, 2026, does not seek the email addresses and telephone numbers of members of the Foxwood community. These are two specific items that Appellant later decided during the lawsuit that he wanted. Appellant has obtained documents from the Respondent through discovery in other cases he has filed against the Respondent and from onsite inspections of the books and records of the Association. The Respondent is steadfast in seeking to protect the email addresses and telephone numbers of its membership from disclosure for privacy reasons and at the request of its members.

The South Carolina Nonprofit Corporation Act requires a homeowners' association to maintain a record of its members in a form that permits preparation of a list of the name and address of all members showing the number of votes each member is entitled to cast. South Carolina Code § 33-31-1601 (1994). The Act does not require that the Respondent keep and maintain a list of members' email addresses and phone numbers and make those available for inspection. There is no requirement that the Respondent make available members' email addresses and telephone numbers. South Carolina Code § 33-31-1601(e) (1994) requires a homeowners' association to keep a copy of specific records at its principal office. The Act also provides the process by which a member of the association can request to inspect and copy those documents. The Act does not

require the homeowners' association to provide email address and phone numbers of its members. Appellant stated in the transcript of the hearing before the trial court, "people come to me all the time and ask me 'Chris, what's really going on?' because they don't believe what the POA is saying. They want that from me. So, if I have the e-mail list, I can write to people and tell them what I believe is going on and have my – my view of what's happening" (P. 10 Lines 24-25 and P. 11 Lines 1-4). So, the purpose for the Appellant's request is to allow him to send out his view of what is happening to over 3200 members, regardless of whether they want to receive that or not. If members of the association want to receive his viewpoint those members can provide Appellant with their email addresses and phone numbers. There is no need to divulge the personal information of the members for Appellant to achieve his wish, he need only provide his contact information to those that ask for it.

The Affidavit of the President of the Respondent confirms that the "books, records, and papers of the Association, shall, during reasonable business hours, be subject to the inspection of any member, unless otherwise restricted or regulated within these bylaws." Pl. Aff. Page 1, Para. 3 and 4. However, the Board of Directors of the Respondent have decided that the email addresses and telephone numbers of the members should not be among those documents available for inspection because those items contain private, personal information that should not be available to anyone coming by for an inspection of the books and records.

Where the party opposing summary judgment relies solely upon the pleadings, files no counter affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under rule 56, to grant summary judgment if, under the facts presented by the moving party, he was entitled to judgment as a matter of law. *Humana Hospital Bayside v. Lightle*, 305 S.C. 214, 407 S.E.2d 637 (1991). Appellant's affidavit in opposition to the

Respondent's motion for summary judgment included no legal arguments, just the Appellant's interpretation of the Respondent's Bylaws and the S.C. Nonprofit Corporation Act. Appellant's affidavit provided nothing by way of factual evidence or persuasive legal authority.

The Court should deny Appellant's appeal based on his failure to sufficiently argue or cite legal authority in support of his position. Where an "appellant fails to provide arguments or supporting authority for his assertions," "he is deemed to have abandoned this issue." *First Sav. Bank v. McLean,* 316 S.C. 361.363, 444 S.E.2d 513, 514 (1994). "Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal the burden of showing abuse of discretion is on the party challenging the trial court's ruling." *Id.; Tirado v. Tirado*, 339 S.C. 649, 655, 530 S.E.2d 128, 131 (Ct. App. 2000) (holding that an issue which is not supported by authority or sufficiently argued is not preserved for appellate review).

Appellant fails to cite any persuasive authority in support of his arguments on appeal. He cites cases that set forth the standard for the granting or denial of a motion for summary judgment under Rule 56 SCRCP; however, he fails to cite any facts or authority for his assertion that the granting of summary judgment to the Respondent by the trial court was improper or an abuse of discretion. Appellant cites *Bowen v. Lee Process Systems*, 342 S.C. 232, 536 S.E.2d 864 (Ct. App. 2000) for the proposition that "summary judgment order is vacated due to a previous judge's error is when the first judge fails to articulate the legal or factual rationale for the decision." *See* Appellant Initial Br. at p. 3, 15. The court's decision in *Bowen* does not stand for the holding that Appellant states. Although Appellant appears *pro se*, he is held to the same standard as an attorney licensed to practice before this Court. *Rouvet v. Rouvet*, 388 S.C. 301, 696 S.E. 2d 204 (Ct. App. 2010).

The order issued by Judge Mcintosh carefully lists the reasons for the denial of the Appellant's motion for summary judgment where he sought to have the Respondent turn over copies of the members' email addresses and phone numbers. The order issued by Judge Caraker likewise, carefully lists the reasons for granting the Respondent's motion for summary judgment.

2. The trial court's order of February 19, 2025, is not appealable.

The Appellant, in his initial brief, attempts to appeal the order issued by the Hon. R. Lawton McIntosh in this case on February 19, 2025. That order is not up for appeal in this case. The Appellant's Notice of Appeal filed by July 21, 2025, provides the appeal is of the Order issued by the trial court (The Hon. David P. Caraker, Jr.) on June 13, 2025. Appellant did not appeal the order issued by The Hon. R. Lawton McIntosh in the case on February 19, 2025. The Court has repeatedly held that the denial of summary judgment is not directly appealable. *Olsen v. Faculty House of Carolina, Inc.* 344 S.C. 294, 544 S.E.2d 38 (Ct. App. 2001), aff'd, 354 S.C. 161, 580 S.E.2d 440 (2003). In that decision, the Court held "the denial of a motion for summary judgment is not appealable, even after final judgment." Id. At 168, n.8, 580 S.E.2d at 444, n.8.

Appellant also fails to provide supporting authority for his attempt to challenge the Order of Judge McIntosh. Appellant states that "Judge Mcintosh appears to confuse a motion to compel hearing that Pierce had scheduled on another case." (App. Initial Br. P. 8). Appellant lists in his brief the argument that the trial judge was "probably quite tired", "confused and fatigued", and "tired and short-tempered" (App. Initial Br. Page 10), as if the only reason for the judge to deny Appellant's motion was that he was tired and confused. Appellant also attempts to lay blame on Respondent's counsel and accuses him of being "complicit in the mix up" (App. Initial Br. P. 9)

The Appellant believes his argument is so convincingly accurate that only judges and lawyers who are tired, confused, short-tempered, or complicit can disagree with his reasoning.

CONCLUSION

There are myriad reasons why Appellant's efforts to overturn the final judgment rendered in this case should fail. Appellant's motion to for summary judgment properly denied because the Appellant is not entitled to obtain the personal email addresses and cell phone numbers from the Respondent's membership. Lastly, the trial court granted the Respondent summary judgment on the Appellant's cause of action as the parties had already agreed that there were no material questions of fact and the trial court agreed with the Respondent as a matter of law.

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