

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Oct 14 2026

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Perry H. Gravely, Circuit Court Judge

Case No. 2024-CP-40-03730
Appellate Case No. _____

Shirley Castillo and Charles Cooper, Respondents,

v.
Canterbury Park at Lake Carolina Association, Inc., a/k/a, Lake Carolina
Masters Association, Inc., and Richland County, Defendants,

Of which Richland County is Appellant.

**RESPONDENTS' MOTION TO DISMISS THE APPEAL OF RICHLAND COUNTY
AND MEMORANDUM IN SUPPORT**

Respondents Shirley Castillo and Charles Cooper move under Rule 240, SCACR, to dismiss the appeal of Appellant Richland County. The County appeals an order of the circuit court that denies its motion for summary judgment. The denial of summary judgment is not appealable. *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 167–68, 580 S.E.2d 440, 443–44 (2003); *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 633–34, 799 S.E.2d 318, 325 (Ct. App. 2017). The appeal should be dismissed.

STATEMENT OF THE CASE

Respondents sued Canterbury Park at Lake Carolina Association, Inc. and Richland County in the Richland County Court of Common Pleas, Civil Action No. 2024-CP-40-03730, for injuries Shirley Castillo suffered when she fell on a sidewalk on March 20, 2024.

By order filed May 6, 2026, the circuit court granted the County’s motion for summary judgment. Respondents moved for reconsideration, and the motion was heard on July 13, 2026. By Form 4 order filed August 5, 2026, the circuit court found “that there are genuine issues of material fact as to this Defendant and thus, summary judgment is not appropriate,” rescinded its May 6, 2026 order, and “denie[d] this Defendant’s Motion for Summary Judgment.” (Ex. A.) The form marks the order as one that “does not end the case.” (Id.)

Separately, Respondents appealed the circuit court’s grant of summary judgment to Canterbury Park. That appeal is pending as Appellate Case No. 2026-001670.

On October 9, 2026, the County filed a Notice of Appeal from the “Form Order Granting Motion for Reconsideration as issued by Circuit Court Perry H. Gravely as filed August 5, 2026.” (Ex. B.) The County’s notice suggests that its appeal may be assigned the same appellate case number as Respondents’ appeal or consolidated with it. (Id.)

ARGUMENT

I. An order denying summary judgment is not appealable.

Our Supreme Court has long held that “the denial of summary judgment is not directly appealable.” *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. at 167, 580 S.E.2d at 443–44 (quoting *Ballenger v. Bowen*, 313 S.C. 476, 476–77, 443 S.E.2d 379 (1994)). The reason is that “the denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment is not appealable.” *Id.* (quoting *Ballenger*, 313 S.C. at 477–78, 443 S.E.2d 379). In *Olson*, the Court declined to depart from that rule, holding that “the denial of a motion for summary judgment is not appealable, even

after final judgment,” and expressly overruling Court of Appeals decisions inconsistent with it. *Id.* at 168, 580 S.E.2d at 443–44.

The order the County appeals is exactly that kind of order. The circuit court found genuine issues of material fact, denied the County’s motion for summary judgment, and left the case pending for trial. (Ex. A.) It decides nothing about the merits of Respondents’ claims against the County and strikes none of the County’s defenses, each of which remains available to the County at trial. Because the denial of summary judgment is not reviewable even after final judgment, it cannot be reviewed now, before one.

II. Respondents’ pending appeal does not make the County’s appeal proper.

The County’s notice points to Respondents’ earlier appeal and asks that the two be given one number or consolidated. That does not help the County. “The denial of summary judgment is not appealable even when accompanied by a proper appeal of the grant of summary judgment on a separate issue.” *Fay v. Total Quality Logistics, LLC*, 419 S.C. at 634, 799 S.E.2d at 325 (citing *Olson*, 354 S.C. at 167–68, 580 S.E.2d at 443–44). In *Fay*, the plaintiff properly appealed a partial grant of summary judgment, and the defendant cross-appealed the denial of summary judgment on its counterclaims. This Court decided the plaintiff’s appeal and dismissed the defendant’s cross-appeal “because a party may not appeal the denial of summary judgment.” *Id.* at 634, 799 S.E.2d at 325; *see also AJG Holdings LLC v. Dunn*, 392 S.C. 160, 167, 708 S.E.2d 218, 222 (Ct. App. 2011) (“Because the circuit court denied summary judgment, we are prohibited from reviewing that ruling pursuant to [*Olson*].”) (quoted in *Fay*, 419 S.C. at 634, 799 S.E.2d at 325).

Olson itself followed the same course. There, the plaintiff’s appeal of a grant of summary judgment was properly before the courts, and the defendant asked for review of the denial of its own summary judgment motion in the same proceeding. The Supreme Court affirmed the Court

of Appeals’ refusal to reach the merits of the defendant’s appeal. 354 S.C. at 167–68, 580 S.E.2d at 443–44. The County stands where the defendants in *Fay* and *Olson* stood. Respondents’ appeal of the separate summary judgment ruling in favor of Canterbury Park gives the County no right to appeal the denial of its own motion, whether its appeal proceeds on its own or is consolidated with Respondents’.

III. The County’s description of the order does not change what it does.

The County’s notice describes the August 5, 2026 order as a “Form Order Granting Motion for Reconsideration.” (Ex. B.) Whatever it is called, the order does one thing: it “denies this Defendant’s Motion for Summary Judgment,” and it does not end the case. (Ex. A.) The rule of *Ballenger* and *Olson* turns on what the order does, and an order that leaves the County’s defenses to be tried is not one this Court may review.

CONCLUSION

Richland County has appealed the denial of its motion for summary judgment, an order that is not appealable. *Olson*, 354 S.C. at 168, 580 S.E.2d at 443–44; *Fay*, 419 S.C. at 634, 799 S.E.2d at 325. Respondents respectfully ask the Court to dismiss the County’s appeal.

Respectfully submitted,

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October 12, 2026

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, the undersigned employee of Goings Law Firm, LLC, counsel for Respondents, certifies that **RESPONDENTS' MOTION TO DISMISS THE APPEAL OF RICHLAND COUNTY AND MEMORANDUM IN SUPPORT**, with its exhibits, was served on all counsel of record by email on this 12th day of October 2026, as follows:

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October 12, 2026
Columbia, South Carolina