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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2026-001670
Case No. 2024-CP-40-3730

Shirley Castillo and Charles Cooper,..... Appellants-Respondents,

v.

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

Of which Canterbury Park at Lake Carolina Association, Inc., a/k/a, Lake Carolina is, ……... Respondent,

Richland County is ……. Appellant.

PETITION FOR REHEARING
OF APPELLANT RICHLAND COUNTY

The Appellant Richland County hereby petitions the South Carolina Court of Appeals for a rehearing of the Court's October 14, 2026 Order dismissing the appeal filed by the County as not being immediately appealable. The Appellant seeks a rehearing before a full three-judge panel pursuant to Rule 221(c), Rule 240(i), and Rule 240(j), SCACR.

The grounds for the Appellant County's petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Appellant County's petition for rehearing is based on the Court's October 14, 2026 Order dismissing this appeal; the supporting memorandum filed herewith; Rule 221(a), Rule 221(c), Rule 240(i), and Rule 240(j), SCACR; and other rules of court as applicable.

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Richland County is ……. Appellant.

MEMORANDUM IN SUPPORT OF APPELLANT RICHLAND COUNTY'S PETITION FOR REHEARING

The Appellant Richland County has petitioned the South Carolina Court of Appeals for a rehearing of the Court's October 14, 2026 summary order dismissing this appeal as not being immediately appealable. The Appellant County seeks a rehearing before a full three-judge panel pursuant to Rule 221(c), Rule 240(i), and Rule 240(j), SCACR. The Appellant County respectfully submits that the below-discussed points were overlooked or misapprehended by the single judge who issued the October 14, 2026 order dismissing the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation arises from a trip-and-fall accident. On March 20, 2024, the Appellant-Respondent Shirley Castillo tripped and fell on the sidewalk in the Canterbury Park subdivision of the Lake Carolina development. Castillo and her husband, Appellant-Respondent Charles Cooper, live at 207 Sherbourne Lane, which is near the end of the street almost to the cul-de-sac. The trip-and-fall accident occurred almost at the intersection of Sherbourne Lane and Lake Carolina Drive, which is an area of sidewalk that Castillo denied being familiar with. Castillo would take almost daily walks in the area "to get in her steps for the day," but she contends that her typical route did not take her to the area where the accident occurred. She was walking alone. The accident occurred in the early afternoon on a sunny day. The ground was dry.

In her deposition, Castillo testified that she tripped on the uneven sidewalk where there was a change in elevation at an expansion joint between two concrete sections. The Appellants-Respondents allege that the left side of the sidewalk was elevated. Castillo testified that she was unaware how long that area of the sidewalk had been in that condition. She does not know of anyone else who had fallen in that location. Likewise, she is unaware of anyone who reported any issue with the sidewalk to the County prior to her fall.

The Defendant Richland County concedes that Sherbourne Lane, where Castillo fell, is a County-maintained road, and that the sidewalk is within the County's right-of-way. However, there is no evidence that the County had actual notice of any issues with the sidewalk in that location prior to the March 20, 2024 accident.

The Appellant Richland County filed a motion for summary judgment. The Respondent Canterbury Park at Lake Carolina Association, Inc., a/k/a, Lake Carolina Masters Association,

Inc. ("Canterbury") likewise moved for summary judgment. Those motions were heard by Circuit Court Judge Perry Gravely on April 13, 2026. By an order filed May 6, 2026, Judge Gravely granted summary judgment to Canterbury. Also, by separate order also filed May 6, 2026, Judge Gravely granted summary judgment to Richland County on several separate bases including (1) Castillo qualifies as a licensee and not an invitee as a matter of law based on the application of Sections 15-78-40 and 15-78-50(b) of the South Carolina Tort Claims Act, (2) the County is entitled to sovereign immunity under Section 15-78-60(16) of the Tort Claims Act, and (3) any "duty to inspect" claim is barred by Sections 15-78-60(4) and 15-78-60(13) of the Tort Claims Act.

The Appellants-Respondents subsequently filed a motion for reconsideration on May 27, 2026, which the County alleges was untimely under Rule 59(e), SCRCP. Counsel for the County was not electronically served with the motion for reconsideration. The Certificate of Electronic Notification filed May 27, 2026 at 10:36 a.m. shows that counsel for Richland County was *not* electronically served. The record includes no other certificate of service on the County or its counsel. At any rate, the filing of the motion on May 27, 2026, was one day out of time which, based upon existing authority of the appellate courts, results in the circuit court losing jurisdiction. Nonetheless, Judge Gravely heard the motion to reconsider and concluded that the court had jurisdiction. He subsequently issued a Form Order filed August 5, 2026, which "rescinded" the previous order filed May 6, 2026, and denied summary judgment to the County due to some undisclosed "genuine issues of material fact."

In the interim, on July 29, 2026, the Respondents-Appellants had filed a Notice of Appeal to this Court from Judge Graveley's orders granting summary judgment to the Respondent

Canterbury and denying a subsequent motion for reconsideration. That appeal is properly before this Court.

Thereafter, with an appeal already proceeding before this Court, the Appellant Richland County filed a Notice of Appeal on October 9, 2026, whereby the Couty is appealing the Form Order issued by Judge Gravely granting the untimely motion for reconsideration. As explained in the Notice of Appeal, the County's counsel received written notice of entry of the Form Order on September 11, 2026, upon receipt of an email from the Appellants-Respondents' counsel on that date. The Appellant County's counsel did not receive a copy of the Form Order through the South Carolina E-filing System because counsel had been marked as "inactive" by the Clerk's Office. The County's Notice of Appeal was filed within thirty days of receipt of written notice of entry of the Form Order granting the motion for reconsideration.

LEGAL ANALYSIS

There are several bases for rehearing the October 14, 2026 order of the single judge dismissing the Appellant County's appeal as "not immediately appealable." Of note, that order of dismissal was filed by the Court prior to the Appellant County even having the opportunity to file a return to the motion to dismiss that had been filed by the Appellants-Respondents just one day earlier. The Appellant County should have been given the opportunity to be heard prior to the dismissal of its appeal.

The Appellant Richland County submits that its appeal, while interlocutory, was properly filed and that appellate jurisdiction should be exercised over this appeal for several reasons to be discussed herein.

As a threshold matter, the Order issued by the single judge misstates the procedural history with respect to the adjudication of the summary judgment motions and the motions for reconsideration in the lower court as well as the nature of the appeal filed by the Appellants-Respondents. As the single judge's order states, the motion for reconsideration was filed by Richland County; it was not. The County never filed a motion for reconsideration The single judge also explains that the motion for reconsideration purportedly filed by the County pertained to the summary judgment granted to Canterbury, resulting in the denial of Canterbury's summary judgment motion. That is not the case. The motion for reconsideration at issue was filed – albeit untimely – by the Appellants-Respondents and not by the County. The summary judgment in favor of Canterbury was never "rescinded," and the appeal filed by the Appellants-Respondents should not be dismissed. That appeal is properly before this Court.

Additionally, as indicated above, the appeal filed by the Appellant Richland County is properly before this Court as well for several reasons. First, contrary to the single judge's determination, the County has appealed the Form Order granting the motion for reconsideration. The County contends that Judge Gravely lacked jurisdiction to hear and adjudicate the motion for reconsideration which was untimely filed on May 27, 2026. As stated above, the filing of the motion on May 27, 2026, was one day out of time which, based upon existing authority of the appellate courts, results in the circuit court losing jurisdiction. *See*, *Russell v. Wachovia Bank*, N.A., 370 S.C. 5, 633 S.E.2d 722, 730 (2006) ("[g]enerally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed"); *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 570 S.E.2d 187, 190 (Ct. App. 2002) ("[a]bsent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment. Such an

interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed"; *Rutland v. Holler, Dennis, Corbett, Ormond, & Garner*, 371 S.C. 91, 637 S.E.2d 316, 319 (Ct. App. 2006) ("because a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment"). *See also*, Rule 6(b), SCRCP ("The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them"). In effect, Judge Gravely had issued summary judgment for the County and then, without having jurisdiction to do so, he rescinded that prior order. That jurisdictional question is properly before this Court as an interlocutory appeal.

Nonetheless, what is most critical to this analysis, and what was overlooked by the single judge, is the fact that there is an appeal properly before this Court *in this case* – that being the Appellants-Respondents' appeal of the summary judgment in favor of the Respondent Canterbury. Thus, there exists an appealable order in this case which triggers appellate jurisdiction. In such instances, the Supreme Court has recognized that "[a]n order that is not directly appealable may be considered if there is an appealable issue before the court." *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 523 S.E.2d 387, 390 (2006). The Supreme Court further explained: "Here, an order in this case which is appealable is before the Court and, in an effort to avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy), we will consider State-Farm's cross-appeal." *Id*. *See also*, *Briggs v. Richardson*, 273 S.C. 376, 256 S.E.2d 544 (1979) (same).

Therefore, whether Judge Gravely's order exercising jurisdiction and granting the motion for reconsideration is immediately appealable or not needs not to be decided. As the Supreme

Court makes clear in *Edge*, because there is an appeal already pending in this case which is properly before this Court, the Court may adjudicate all of the appeals taken by the parties, including the grounds raised by Richland County.

Judicial economy would certainly be best served if the Court proceeds with addressing all issues, including the jurisdictional issue, while it has this case on appeal. In addition to the jurisdictional question, the Appellant Richland County, as outlined above and explained in detail in Judge Gravely's order filed May 6, 2026, has asserted three separate and distinct legal defenses under the Tort Claims Act. Those legal defenses may be determined based on the facts taken in a light most favorable to the Appellants-Respondents, even though the material facts for the purpose of applying those legal defenses under the Tort Claims Act are, in actuality, undisputed. In effect, the basis for granting the motion for reconsideration (assuming proper jurisdiction) is unsupportable. Of note, no genuine issue of material fact was even noted in the Form Order. More critically, if the Court looks at the issues raised by the Appellants-Respondents in their motion for reconsideration, they were taking exception to the legal decisions made by Judge Gravely in his interpretation and application of various provisions of the Tort Claims Act. Those legal issues are at the core of this litigation. Once a remittitur is issued, those legal issues will be re-asserted and reargued, and most likely, they will be back before this Court on a latter appeal. By hearing and adjudicating those issues now, the Court will, as in *Edge*, avoid another appeal in the future.

At the very least, with this case already on appeal, judicial economy would at least best be served by the Court refraining from making a premature decision on whether the appeal grounds by the County should be heard and are worthy of adjudication at this stage of the litigation. Consistent with the Supreme Court's decisions in *Edge* and *Briggs*, the Court is

respectfully asked not to summarily dismiss the appeal at this stage but rather allow for the briefing and arguments on the County's legal issues for appeal. Ultimately, after those legal issues are fully briefed and argued, the Court may determine whether judicial economy is served by the adjudication of one or more of those issues.

CONCLUSION

For the foregoing reasons, the Appellant Richland County respectfully requests that the panel rehear and reconsider the dismissal of its appeal and allow this appeal to proceed.

Respectfully submitted,

s/ Andrew F. Lindemann
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Richland County is ……. Appellant.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant Richland County, does hereby certify that service of the **Petition for Rehearing of Appellant Richland County** and **Memorandum in Support of Appellant Richland County's Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by email only this the 29th day of October 2026, as follows:

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