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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002127
Case No. 2023-CP-28-0538

Christine Jernigan, ... Appellant,

v.

Kershaw County South Carolina, ... Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal from a Freedom of Information Act (FOIA) action. This case involves a July 22, 2022 FOIA request made by Justin Jernigan as the identified "Requestor" to the Kershaw County Sheriff's Department. Justin Jernigan is the son of the Appellant Christine Jernigan. Justin was a citizen of North Carolina. His address was listed in the FOIA request as Weddington, North Carolina. (R. 54). Justin is also a licensed attorney in both North Carolina and South Carolina. (R. 263). He is representing the Appellant in this action. (R. 263). However, there is no indication on the multi-page FOIA request that he was acting as the attorney for Christine Jernigan nor in any representative capacity. To the contrary, each page of the FOIA request refers to Justin Jernigan as the "Requestor." (R. 54-57).

Likewise, the FOIA request includes innumerable uses of the word "I" as a reference to Justin Jernigan and no one else. Moreover, the FOIA request includes a number of references to Christine Jernigan by referring to her as "my mother." (R. 55). The FOIA request also refers to other family members of Justin Jernigan and uses reference terms as "my grandmother," "my aunt," "my uncle," and "my family." (R. 55-56). Notably, the FOIA request makes it clear that Justin Jernigan was intricately involved in a personal manner in the events described, as evidenced by such terms as "I drove," "I spoke," "I contacted," etc. (R. 55-56).

Additionally, the Complaint includes 34 pages of pre-suit emails between Justin Jernigan and counsel for the Respondent Kershaw County. Those emails written by Justin include at least a dozen references to "my FOIA request" or "my request"; yet, at no time did Justin refer to the request as that of the Appellant. (R. 19-52). Justin did not reference the Appellant as "my client" in the FOIA request or the emails. In fact, he refers to no one as his client.

By way of procedural history, the Appellant Christine Jernigan filed her Complaint alleging FOIA violations by the Respondent Kershaw County on July 24, 2023. (R. 2). She followed that filing with a so-styled "Motion for Equitable Relief" on July 28, 2023. (R. 100-113). The Respondent was served with the pleadings on July 28, 2023. (R. 142). The Appellant's counsel sent a letter to Circuit Court Judge Jocelyn Newman on August 7, 2023, requesting that a "ten-day hearing" be scheduled, and it was scheduled on that date, with the hearing to be held on the following day, August 8, 2023. (R. 143). The transcript of the hearing is in the record. At the close of the hearing, Judge Newman denied the motion and attempted to explain her reasoning. Because of numerous interruptions and arguments from the Appellant's counsel, Judge Newman ultimately opted to issue a Form Order denying the Motion for Equitable Relief. (R. 217-224). The Form Order states that the order "does not end the case." (R. 144). On August 15, 2025, the Appellant filed a Motion for Clarification and Reconsideration. (R. 147-160). Thereafter, on August 28, 2023, the Respondent filed its Answer, joining the issues for trial. (R. 162-168).

The case was included on a non-jury trial docket in Kershaw County for August 27, 2024. The Kershaw County Public Index reflects that the attorneys for the parties were provided advance notice of that term of court on July 23, 2024.[1] Circuit Court Judge Jocelyn Newman was the presiding judge for that term of court. On August 27, 2024, the case was called to trial, and only the Respondent, its counsel, and witnesses appeared ready to proceed. The Appellant and her counsel did not make an appearance and had not previously sought a continuance nor communicated in any manner with the trial judge or opposing counsel. Based on the Appellant's failure to appear without excuse or explanation, the Respondent Kershaw County made an oral motion to dismiss for failure

[1] *See*, *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325, 327 (Ct. App. 1984) ("[a] court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records").

to prosecute, and that motion was granted. (R. 238-240). The trial court also granted the Respondent's motion for judgment on the pleadings which was based on three points: (1) the FOIA request at issue was not made by the Appellant and accordingly she had no FOIA request to enforce; (2) Justin Jernigan who made the FOIA request is not a party to the litigation; and (3) even if Justin Jernigan was a party, he lacked standing because he was not a "citizen of the State" as required by Section 30-4-100(A) of the Freedom of Information Act. Those same arguments had been made previously at the "ten-day hearing" on August 8, 2023. (R. 238-240).

By Order filed October 17, 2024, the trial court granted the motion to dismiss for failure to prosecute for the reasons stated above. The trial court also granted the Respondent Kershaw County's motion for judgment on the pleadings in that same order. (R. 243-247).

On October 28, 2024, the Appellant filed a motion to reconsider pursuant to Rule 59(e), SCRCP. (R. 248-262). Thereafter, the trial court issued a Form Order filed November 21, 2024, and ruled that "[t]he motion was not timely filed and is not meritorious." (R. 270-272). The Appellant did not file a subsequent Rule 59(e) motion to dispute the trial court's ruling that his October 28, 2024 motion was untimely. Instead, the Appellant filed a notice of appeal on December 16, 2024.

As the procedural history reflects, the trial court never adjudicated the merits of the FOIA claim. In her Opening Brief, the Appellant includes a detailed argument regarding the FOIA request, the responses received thereto, and the issues at controversy in the litigation in her "Statement of the Case." That is in contravention of Rule 208(b)(1)(C), SCACR, which states: "The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters." Rule 208(b)(1)(C), SCACR. The Respondent Kershaw County disputes much of what has been

improperly argued in the Appellant's "Statement of the Case," but the Respondent will not address each contested document or recording because quite simply the merits of the alleged FOIA violations are not before this Court on appeal and are not necessary to the adjudication of this appeal for the reasons discussed below.

STANDARD OF REVIEW

"The question of whether an action should be dismissed ... for failure to [prosecute] is left to the discretion of the circuit [court] and [its] decision will not be disturbed except upon a clear showing of an abuse of such discretion." *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802, 804 (1970). "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987).

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011).

ARGUMENTS

I. The South Carolina Court of Appeals lacks appellate jurisdiction over this appeal.

The Appellant failed to file a timely notice of appeal, and for that reason, this Court lacks appellate jurisdiction. In its Form Order filed November 21, 2024, the trial court ruled that the Appellant's motion to reconsider "was not timely filed." (R. 270). While the Appellant included that Form Order in her notice of appeal, when the Appellant filed her Appellant's Opening Brief which establishes the issues raised on appeal, the Appellant did not appeal or raise as an issue on appeal that the trial court's finding that her motion to reconsider "was not timely filed" was in error. That issue is not mentioned or addressed in the Statement of Issues on Appeal nor in the Argument section of that Opening Brief. In fact, there is no issue on appeal directed at the Form Order filed November 21, 2024, nor any substantive discussion of that Form Order in the Appellant's Opening Brief.

Therefore, given the posture of this appeal and briefing, it is clear that the Appellant has not appealed the trial court's explicit ruling that her motion to reconsider "was not timely filed." It is well-settled that "an unappealed ruling, right or wrong, is the law of the case." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012). Thus, the law of this case – whether correct or not – holds that the Appellant's motion to reconsider was not timely filed.

Rule 203(b)(1), SCACR, provides: "When a *timely* motion ... to alter or amend the judgment … has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." Rule 203(b)(1), SCACR. (Emphasis added). Likewise, Rule 59(f), SCRCP provides: "The time for appeal for all

parties shall be stayed by a *timely* motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." Rule 59(f), SCRCP. (Emphasis added). Thus, in order for a motion to reconsider brought pursuant to Rule 59(e) to stay the time for appeal, that motion must be "timely."

In the case at bar, however, the trial court issued an unappealed ruling that the motion to reconsider "was not timely filed," and as a result, the filing of that motion to reconsider did not stay the time for filing the notice of appeal. Instead, the Appellant had thirty days from the filing date of the October 17, 2024 Order in which to file her notice of appeal, but the notice of appeal was not filed until December 16, 2024. That was too late, and accordingly, this Court lacks appellate jurisdiction.[2]

While it appears that the trial court may very well have been in error in ruling that the motion to reconsider "was not timely filed," that does not impact the analysis of appellate jurisdiction. As mentioned, under clear South Carolina precedent, the trial court's unappealed ruling that the motion to reconsider was untimely filed – whether right or wrong – constitutes the law of this case. In addition to not appealing that ruling in her Opening Brief, the Appellant never preserved that issue by filing a subsequent Rule 59(e) motion calling any error regarding

[2] In response to the earlier filed Motion to Dismiss Appeal, the Appellant attempted to challenge the trial court's explicit ruling that her motion to reconsider "was not timely filed." However, it is too late for her to challenge that ruling at this stage of the appeal, where the Appellant both failed to appeal from that ruling in her Opening Brief and failed to seek reconsideration from the trial court prior to even filing her appeal. Notably, the Appellant did not dispute that she committed those very errors, but instead disputes their impact on this Court's appellate jurisdiction. The Appellant referred to those errors as "alleged procedural missteps or deficiencies which do not affect this Court's appellate jurisdiction." She is incorrect in that regard.

the timeliness of the motion to reconsider to the trial court's attention and giving that court the opportunity to correct such error.[3]

As is well-settled, the law on issue preservation in South Carolina mandates that an error be first called to the trial court's attention in order to preserve an issue for appeal. That is also the case where an error is initially made in an order resolving a motion to reconsider. As this Court has held, "[w]hen a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal." *In re Timmerman*, 331 S.C. 455, 502 S.E.2d 920, 922 (Ct. App. 1998). The reason for that is clear: the trial court must have "the opportunity promptly to correct their own alleged errors." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 779 (2004).[4] *See also*, *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673, 675 (1993) (issue not preserved for appeal where the ruling is made first in a post-trial order and is not challenged by a subsequent Rule 59(e) motion); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859, 859 (Ct. App. 1993) (where a theory of relief was first raised in the lower court's order, appellant must challenge this theory with a Rule 59(e) motion); *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000) ("The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court

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[3] This rule of law is also consistent with the longstanding precedent that "South Carolina appellate courts do not recognize the 'plain error rule,' under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Thus, this Court cannot rectify or correct any timeliness issue that was not challenged in the court below and was not raised on appeal to this Court.

[4] *See*, *Sweeney v. Sweeney*, 420 S.C. 69, 800 S.E.2d 148 (Ct. App. 2017) (finding "[b]ecause the family court did not have the opportunity to rule upon the issue or *correct any alleged mistakes in its final order*, we find it unpreserved for our review"). (Emphasis added).

erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments").

Thus, in addition to failing to appeal the trial court's ruling that the motion to reconsider "was not timely filed," the Appellant also failed to raise any timeliness error to the trial court before filing her appeal. Contrary to the Appellant's assertion, her so-called "procedural missteps or deficiencies" cannot be corrected at this stage of the litigation, and this Court has no jurisdiction to excuse those errors. Moreover, as stated in Rule 6(b), SCRCP, "[t]he time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order." Rule 6(b), SCRCP. As the Supreme Court has held, "[s]ervice of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206, 207 (1985). As a pertinent example of this rule applied under similar circumstances, in *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002), the Supreme Court actually reversed this Court for granting the appellant's motion to correct the record and for accepting a backdated notice of appeal where the court lacked appellate jurisdiction to do so. 560 S.E.2d at 610. The same limitations on appellate jurisdiction apply in this appeal. Accordingly, this Court lacks jurisdiction to take any corrective action even if it may wish to do so.

In sum, the Respondent respectfully requests that the Court dismiss this appeal for lack of appellate jurisdiction.

II. The trial court's denial of the Appellant's Motion for Equitable Relief is not appealable even after final judgment.

The Appellant has appealed the denial of her so-styled Motion for Equitable Relief which was filed July 28, 2023, and was heard on August 8, 2023, by the trial judge. The motion was filed following the filing of her Complaint on July 24, 2023. The Appellant sought relief pursuant to Section 30-4-100(A), which provides in pertinent part as follows:

> A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties.

S.C. Code Ann. § 30-4-100(A).[5] Following the hearing, the trial judge issued a Form Order summarily denying the motion and providing no specific rulings on the Appellant's FOIA claims and the relief sought. The transcript of the August 8, 2023 hearing shows that the trial judge

[5] The Appellant argues that the trial court erred in "failing to follow the procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A) to reach a timely final resolution." *See*, Appellant's Opening Brief, p. 25. In this case, the trial judge held a hearing on August 8, 2023, but there is no indication in the record, including the hearing transcript, that the Appellant raised any objection to the trial court regarding the timing of the hearing. The Appellant likewise has not shown any prejudice resulted from holding the hearing on August 8, 2023. In *Davis v. South Carolina Educational Credit for Exception Needs Children Fund*, 441 S.C. 187, 893 S.E.2d 330 (Ct. App. 2023), this Court noted that "[i]nitial hearings under FOIA are generally supposed to be scheduled 'within ten days of service on all parties.'" 893 S.E.2d at 332, n.2. According to the affidavit of service, the Respondent was served with the Complaint on July 28, 2023. As a result, the hearing was held on the eleventh day after service. Importantly, however, the Appellant made a request for a hearing to the chief administrative judge on August 7, 2023, which was the tenth day after service. The hearing was then set to be held the next day. The record thus shows that the hearing was scheduled within the ten-day window (by August 7, 2023), and was held on the following day. This demonstrates compliance with the plain language and certainly the spirit of Section 30-4-100(A), and most certainly, the Appellant has not demonstrated any prejudice.

attempted to address with Appellant's counsel the bases for her denial of the Motion for Equitable Relief, but she was interrupted several times. The trial judge then made the decision to summarily deny the motion by the issuance of a form order. (R. 217-224).

On appeal, the Appellant argues that her Motion for Equitable Relief was denied in error, and despite being an interlocutory ruling, the Appellant asks this Court to award final dispositive relief. However, the ruling of the Motion for Equitable Relief is no different from other interlocutory orders directed at the merits of a cause of action which are not appealable even after final judgment. The Motion for Equitable Relief, despite the label attributed to the motion by the Appellant,[6] is the functional equivalent of a motion for summary judgment, or at the very least, is akin to a motion for summary judgment which seeks an early summary disposition as to the merits of a case.

South Carolina law is well established that such motions do not establish the law of the case or a final judgment that may be appealed. The Supreme Court has clearly explained that "[a] denial of a motion for summary judgment decides nothing about the merits of the case." *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). "The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings." *Id*. The Supreme Court further explained in *Ballenger* that "the denial of summary judgment does not *finally* determine anything about the merits of the case." *Id.* (Emphasis in original). *See also*, *McLendon v. South Carolina Department of Highways and*

[6] This Court has explained that "[g]enerally, section 14-3-330(2) has been narrowly construed and immediate appeal of various orders issued before or during trial generally has been allowed. We believe a narrow construction of section 14-3-330(2)(c) requires us to focus on the effect of the order, not the label given to the motion or to the order granting it." *Thornton v. South Carolina Electric & Gas Corp*., 391 S.C. 297, 705 S.E.2d 475, 478 (Ct. App. 2011)."Our courts have previously looked beyond labels on motions and orders to discern their actual effect for purposes of appealability." *Id*., n. 6.

Public Transportation, 313 S.C. 525, 443 S.E.2d 539, 540, n.2 (1994) ("the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings").[7]

Additionally, and of particular importance here, the Supreme Court has held that "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of South Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440, 444 (2003). *See also*, *Silverman v. Campbell*, 326 S.C. 208, 486 S.E.2d 1 (1997). In applying this case law to the case at bar, the Appellant should be precluded from appealing the interlocutory order denying her Motion for Equitable Relief. That order did not finally decide the merits of the case nor establish the law of the case. Instead, it allowed for the issues raised by the motion to be litigated again later in the proceedings, which includes during the non-jury trial of the case scheduled for and held on August 27, 2024. Because the Appellant did not appear at trial, she abandoned her claims and waived any right to obtain a ruling on the merits of her FOIA claims (in the event she had standing in the first place).

In her Opening Brief, the Appellant addresses the appealability of the Form Order denying her Motion for Equitable Relief by arguing that her motion is akin to a motion for temporary injunction and that an order denying a motion for temporary injunction is immediately appealable pursuant to Section 14-3-330(4). *See*, Appellant's Opening Brief, pp. 12-13.

[7] "As a general rule, only final judgments are appealable." *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205, 208 (2005). As the Supreme Court has explained "[a]ny judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Id*. *See also*, *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163, 164 (1996).

However, even if her motion is akin to a motion for temporary injunction, which is disputed,[8] the Form Order is still not appealable after final judgment. By their very nature, "[t]emporary injunctions are interlocutory, tentative, and impermanent and are superseded by the final judgment rendered on the merits." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, 597 (2001). "The sole object of a temporary injunction is to preserve the subject of the controversy in its condition at the time of the order until opportunity is offered for full and deliberate trial investigation." *Id*. "[A] temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 413 S.E.2d 824, 826 (1992). "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction." *Id*. Most importantly, "[t]he sole purpose of a temporary injunction is to preserve the status quo." *County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902, 905 (Ct. App. 2002).

Consequently, the denial of a motion for temporary injunction is not appealable after final judgment, which is the procedural posture of this appeal. Accordingly, the Form Order which summarily denied the Appellant's Motion for Equitable Relief is not appealable, even after final judgment. For these reasons, the Court should not reach the merits of the Motion for Equitable Relief.

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[8] As a corollary to her argument that an initial hearing under Section 30-4-100(A) is "like a motion for temporary injunction," the Appellant argues that "a FOIA plaintiff need only establish a showing of likelihood of success on the merits to obtain the declaratory and equitable/injunctive relief requested." *See*, Appellant's Opening Brief, p. 22. However, the Appellant fails to recognize the difference between a temporary injunction and a permanent injunction. The ultimate relief on the merits, if proven, would be a permanent or mandatory injunction; however, a permanent or mandatory injunction is *not* demonstrated by proof of a *likelihood* of success on merits. Instead, the plaintiff must actually succeed on the merits. Thus, this notion that a plaintiff's burden under Section 30-4-100(A) is to show a *likelihood* of success on merits should be quickly dispelled.

III. The trial court did not abuse its discretion in dismissing the Appellant's action based on her failure to prosecute when she failed to appear for the scheduled term of court and trial of the case.

The trial court dismissed the Appellant's case after neither the Appellant nor her counsel appeared for a scheduled non-jury term of court. At the call of the case, as reflected in the transcript from August 27, 2024, neither the Appellant nor her counsel were present. (R. 238-239). The trial judge noted that the "Defendant and their witnesses were present and ready to proceed to trial." (R. 243).[9] The trial judge further explained that "plaintiff had not communicated with the Court or with Defendant's counsel and had not requested a continuance." (R. 243). Moreover, the trial judge found that "[a]ll parties were properly notified of the term of court." (R. 243). The Respondent made a motion to dismiss for failure to prosecute, and that motion was granted "[d]ue to the absence of Plaintiff for a properly noticed non-jury trial term of court and the lack of communication from Plaintiff." (R. 243).

Rule 41(b), SCRCP, authorizes a court to dismiss an action based upon a plaintiff's failure to prosecute. In *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802 (1970), the Supreme Court held that "it is within the inherent power of the court to dismiss an action for failure to prosecute." 175 S.E.2d at 803. The Supreme Court has further held that "[t]he plaintiff has the burden of

[9] Contrary to the Appellant's assertions that there are no factual disputes for trial, a trial was necessary. The Appellant's counsel had repeatedly accused Kershaw County Dispatch of tampering with, editing, and redacting information from the recordings that have been produced. Justin Jernigan has demanded that recordings that are not tampered with, edited, or redacted be produced. In a prior case against Kershaw County Sheriff's Department, he likewise claimed that records that do not exist, such as an incident report, actually do exist and have been hidden. In this case, no tampering, editing, or redacting occurred. The Respondent spent time and effort preparing for trial, reviewing all the audio recordings and comparing the original recording with the recordings produced by pre-suit counsel, having witnesses from Central Dispatch listen to the same recordings to verify that what was produced was accurate, and had witnesses prepared to testify. Those witnesses were present in the courtroom for trial. They were prepared to testify regarding the unsubstantiated factual disputes that the Appellant's counsel has proffered.

prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause. This authority is necessary if the courts are to control and efficiently manage an ever-expanding docket." *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757, 758 (1983). In *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997), the Supreme Court further explained that "[p]rovision is made in federal and state statutes or rules of practice for dismissal of civil actions for failure of prosecution by the plaintiff. However, the power of trial courts to dismiss a case for failure to prosecute with due diligence is generally considered inherent and independent of any statute or rule of court. Such power is deemed to be necessarily vested in trial courts to manage their own affairs so as to achieve orderly and expeditious disposition of cases." 493 S.E.2d at 832.

"The question of whether an action should be dismissed ... for failure to [prosecute] is left to the discretion of the circuit [court] and [its] decision will not be disturbed except upon a clear showing of an abuse of such discretion." *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802, 804 (1970). "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987).

On appeal, the Appellant makes two arguments to seek the reversal of the order dismissing this case for the failure to prosecute, neither of which demonstrate any abuse of discretion by the trial court. First, the Appellant argues that the case should not have been placed on the trial docket because she still had a motion for reconsideration pending before the trial judge assigned to the term of court, that being Judge Newman. A pending motion is not a valid basis for objecting to the placement of a case on a trial docket and certainly not a valid basis for disregarding a properly noticed trial term of court. The pending motion could have been raised

as a basis for a pre-trial motion for continuance, but the Appellant made no such motion, and by her own admission, her counsel failed to contact the trial judge nor opposing counsel prior to the August 27, 2024 term of court. Second, as a related argument, the Appellant claims that her counsel "neglected to contact the court and opposing counsel" prior to the term of court "due to a docketing error/mistake." *See*, Appellant's Opening Brief, p. 30. The Appellant references a sworn declaration of her counsel filed October 28, 2024; however, a review of that declaration includes no explanation for counsel's failure to appear for the August 27, 2024 term of court and, more importantly, fails to offer any explanation as to the nature or circumstances of the "docketing error/mistake." (R. 263-264). The Appellant and her counsel certainly did not dispute that they had received proper notice of the term of court. Moreover, at the call of the case for trial, the Respondent's counsel advised the trial judge that he texted the Appellant's counsel the previous Saturday night "to give him a heads-up on one of the motions I was going to make today." (R. 238). The Appellant does not dispute that information or that the text was received.

In short, the Appellant has not shown that the trial judge abused her discretion in granting a dismissal when the Appellant and her counsel did not appear. The record shows that the Appellant's counsel did not believe a trial was necessary, did not communicate with the parties or the court prior to the trial date, and did not appear for trial. The dismissal is certainly not based on an error of law. Prior precedent, including the Supreme Court's decision in *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802 (1970), support the dismissal under similar circumstances where a plaintiff and his counsel failed to appear when a case was called to trial. The Supreme Court found that to be a proper ground for dismissal. In addition, as described above, there is a sufficient factual basis for the trial court's dismissal of the action, and hence, no abuse of

discretion. To that point, under an abuse of discretion standard, the reviewing court may not substitute its own judgment or findings for the trial court's judgment and factual findings. In fact, the Supreme Court in *Small* recognized that "[a] broad discretion must be allowed a trial judge in arranging and calling the cases for trial and only in cases of manifest injustice will this court interfere." *Small*, 175 S.E.2d at 802. The Appellant in the case at bar has simply not demonstrated a manifest injustice. Accordingly, the dismissal of the case for failure to prosecute should be affirmed.

IV. The trial court did not abuse its discretion in entertaining the Respondent's motion for judgment on the pleadings nor err in ruling that the Appellant lacks standing to bring this action.

In addition to entertaining a motion to dismiss for failure to prosecute, the trial court also heard a motion for judgment on the pleadings. Based thereon, the trial court ruled that the Appellant's FOIA action fails for lack of standing. In essence, the Respondent argued, as it did at the "ten-day hearing" held on August 8, 2023, that the FOIA requester was Justin Jernigan and not the Appellant Christine Jernigan. Justin Jernigan was not a party to the litigation, and even if he were, he is a resident and citizen of North Carolina and hence has no standing to bring an action under Section 30-4-100(A). (R. 239). The trial court agreed with the Respondent's position, which is correct as a matter of law and should be affirmed. (R. 240, 244-246).

The record clearly reflects that the Plaintiff is Christine Jernigan, but the FOIA request was made by Justin Jernigan, who is identified as the "Requestor" on each page of the request. (R. 54-57). While Justin Jernigan is an attorney and is representing his mother in this litigation, the FOIA request does not state that he was making that request for a client or in any representative capacity. He did not even identify himself as an attorney, nor did he use his

professional email address. (R. 54). Moreover, as the trial court correctly recognized, Justin Jernigan, as the requester and the person who would typically have standing to enforce compliance with the request if he was a South Carolina citizen, is not a party to the litigation. Finally, even if Justin Jernigan were the plaintiff, he would still lack standing under the plain and ordinary language of Section 30-4-100(A), which bestows standing only on "[a] citizen of the State" who "may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter." S.C. Code Ann. § 30-4-100(A).

The Appellant has not demonstrated any legal error committed by the trial court. The factual matters are undisputed. The named plaintiff is Christine Jernigan and not Justin Jernigan. The requester on the FOIA request is Justin Jernigan. The FOIA request does not identify that Justin Jernigan was acting as an attorney or in any representative capacity. Lastly, Justin Jernigan is a resident and citizen of North Carolina and not South Carolina. The legal ruling is also correct because, in explicit language, a FOIA enforcement action brought in circuit court may only be brought by "[a] citizen of the State." S.C. Code Ann. § 30-4-100(A). There is no reason to believe that the General Assembly did not carefully and deliberately use that language in Section 30-4-100(A). In fact, in its legislative findings, the General Assembly found that "it is vital in a democratic society that public business be performed in an open and public manner so that *citizens* shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. § 30-4-15. (Emphasis added). The General Assembly could have used the term "persons," but instead, it used "citizens."

Indeed, in the very case cited by the Appellant, *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012), the Supreme Court wrote: "In following the legislature's unmistakable intent,

this Court … stated '[FOIA] permits any *citizen* to apply to the circuit court for injunctive relief.'" 728 S.E.2d at 44, *citing Fowler v. Beasley*, 322 S.C. 463, 472 S.E.2d 630 (1996). (Emphasis added). The Court in *Freemantle* also states: "The legislature has specifically conferred standing upon any *citizen of South Carolina* to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required." 728 S.E.2d at 45. (Emphasis added).

Thus, like the trial judge in the case at bar, the Supreme Court also recognized that an enforcement action must be brought by a South Carolina citizen. Accordingly, where the requester is not a South Carolina citizen, that requester has no statutory standing under the prevailing statutory and case law to file an action in circuit court pursuant to Section 30-4-100(A). The trial court's ruling in that regard is dispositive of the Appellant's entire FOIA case, and should result in an affirmance of the dismissal.[10]

[10] Notably, the trial judge cited to the United States Supreme Court case of *McBurney v. Young*, 569 U.S. 221 (2013), to support her ruling that limiting a FOIA enforcement action to state citizens is lawful. (R. 245). The Supreme Court recognized that the "state Freedom of Information Act … provides a service that is related to state citizenship." 569 U.S. at 224. The Supreme Court reaffirmed that there is "no constitutional right to obtain all the information provided by FOIA laws." 569 U.S. at 232. Ultimately, the Supreme Court acknowledged "[t]he state FOIA essentially represents a mechanism by which those who ultimately hold sovereign power (*i.e.,* the citizens of the Commonwealth) may obtain an accounting from the public officials to whom they delegate the exercise of that power." 569 U.S. at 228. "In addition, the provision limiting the use of the state FOIA to Virginia citizens recognizes that Virginia taxpayers foot the bill for the fixed costs underlying recordkeeping in the Commonwealth." *Id*. These are the very distinctions that the trial court in the case at bar also recognized. On appeal, the Appellant makes no mention of the *McBurney* decision and does not argue that the reasoning by the United States Supreme Court is not equally applicable to the South Carolina Freedom of Information Act which limits enforcement actions to "[a] citizen of the State."

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Kershaw County requests that this Court dismiss this appeal for lack of appellate jurisdiction. In the alternative, the Respondent respectfully requests that the Court affirm the orders issued by Circuit Court Judge Jocelyn Newman dismissing the Appellant's FOIA claim.

Respectfully submitted,

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October 6, 2025

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent certifies that the Final Brief of Respondent complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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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 Respondent, does hereby certify that service of the **Final Brief of Respondent** in the above-captioned matter was made upon all counsel of record by email only this the 6th day of October 2025, as follows:

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Via Email and Hand Delivered
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RE: Christine Jernigan v. Kershaw County South Carolina
Appellate Case Number: 2024-002127
Civil Action Number: 2023-CP-28-0538
Claim Number: GL2022-13
Our File Number: 290.20826

Dear Ms. Kitchings:

Pursuant to Section (b)(2)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), please find enclosed for filing the **Final Brief of Respondent** with regard to the above referenced appeal. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise. Thank you for your assistance.

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac
Enclosure

cc: Justin A. Jernigan, Esquire *(w/ Enclosure, Via Email Only)*
David L. Morrison, Esquire *(w/ Enclosure, Via Email Only)*