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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

Consolidate Case Nos. 2023-CP-42-01221, 2023-CP-42-01226, 2023-CP-42-01367, 2023-CP-42-01545

Appellate Case No. 2024-001828

South Carolina Native Plant Society, Appellant,

vs.

Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents,

and

The Enclave at Fairview Farm Homeowners' Associations, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a/ Caroland Farms, Appellants,

vs.

Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.

PETITION FOR REHEARING

The South Carolina Native Plant Society ("the Society") hereby petitions this Court for rehearing of its August 5, 2026 decision dismissing this appeal. This petition is submitted in accordance with Rules 221 and 240, SCACR.

Pursuant to Rule 221(a), SCACR, Appellants seek rehearing because the Court's order overlooked and misapprehended two issues critical to the appellate jurisdiction analysis under S.C. Code Ann. § 14-3-330: first, whether the Circuit Court's September 26, 2024 Order involved the merits of the underlying action within the meaning of Section 14-3-330(1); and second, whether the Circuit Court's Order affected a substantial right and, in effect, determined the action and prevented a judgment from which an appeal might be taken under Section 14-3-330(2).

As this Court recognized, "[t]he determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by Section 14-3-330 of the South Carolina Code." Order at 3 (quoting *Hagood v. Sommerville*, 362 S.C. 191, 195 (S.C. 2005)). Among other categories, Section 14-3-330 authorizes appellate review of: "(1) Any intermediate judgment, order or decree in a law case involving the merits;" and, "(2) An order affecting a substantial right made in an action when such order: (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." S.C. Code Ann. § 14-3-330(1), (2).

Although the Court concluded that the September 26, 2024, Form 4 Order was not immediately appealable, the Order does not address whether the Circuit Court's Order involved the merits of the action under Section 14-3-330(1) or whether it affected a substantial right and effectively determined the action under Section 14-3-330(2). The Circuit Court's Order satisfies both standards.

I. This Court Overlooked and Misapprehended Whether the Circuit Court's Order Involved the Merits of the Action.

S.C. Code Ann. § 14-3-330(1) grants appellate jurisdiction over an order "in a law case involving the merits." That is precisely the circumstance presented here.

After full briefing and a hearing on the merits of the Spartanburg County Planning Commission's ("Commission") conditional approval of the RV Park Site Plan, the Circuit Court entered an Order and Opinion on April 22, 2024, addressing and resolving the *substantive* issues raised in the Society's appeal. April 2024 Opinion & Order (R. pp. 00001–14). The Circuit Court rejected the majority of the Society's challenges, concluding, among other things, that "the Commission's decision did not violate the Ordinance Preamble, Section 3.13(2) requiring the preservation of 'natural features and landscape,' or the provision of Section 3.13(8) requiring 'sewer or other systems approved by DHEC.'" *Id.* at 5 (R. p. 00006). The Circuit Court also rejected the Society's challenge that the Commission acted illegally, arbitrarily, and capriciously by failing to provide the reasons for reaching any of these conclusions. *Id.* at 11 (R. p. 00012). At the same time, the Circuit Court granted the appeal in part, holding that the Commission violated the Ordinance by conditionally approving a site plan for an RV Park that lacked public water service and comfort stations. *Id.* at 5-7 (R. pp. 00006-8).

Following that decision, Respondents filed a Rule 59(e) motion seeking alteration or amendment of the Circuit Court's ruling. Respondents asked the Circuit Court to reconsider its decision to vacate, rather than remand, the conditional approval and to alter its conclusions regarding the public-water and public-restroom requirements. *See* Respondents' Motion to Alter or Amend, *S.C. Native Plant Society*, Case No. 2023-CP-42-01221 (May 1, 2024) (R. pp. 00581-84). After a hearing, the Circuit Court entered a Form 4 Order, described as a "Statement of Judgment by the Court," which appeared to modify the remedy from vacatur to remand while otherwise leaving intact the court's underlying merits determinations. Order, *S.C. Native Plant Society*, Case No. 2023-CP-42-01221 (Sept. 26, 2024) (R. pp. 00015-17) ("September 2024 Order").

An order "involves the merits" when it "finally determine[s] some substantial matter forming the whole or part of some cause of action or defense in the case." *Knowles v. Standard Sav. & Loan Ass'n,* 274 S.C. 58, 59 (S.C. 1979); *Mungo v. Rental Unif. Serv. of Florence, Inc.*, 383 S.C. 270, 278 (S.C. Ct. App. 2009). Here, the Circuit Court "finally determine[d]" *every* substantive issue raised in the Society's challenge to the Commission's conditional approval of the RV Park Site Plan. The Circuit Court determined which provisions of the Ordinance had been violated and which had not been violated. Nothing remains for the Commission or the Circuit Court to decide regarding the merits of the Society's claims. Under the Circuit Court's Order, the Commission can continue to allow the RV Park to install a septic system rejected as inadequate by the DHEC Board and put in place a site plan that does not preserve the natural features of the site, specifically the rare plants and their equally rare habitat. And the Commission can proceed without providing the reasons for these decisions, which ignore the governing provisions of the County's own Ordinance.

Importantly, there are no factual or other issues to be determined on any remand in order to determine the rights of the parties. The Commission decided all the issues presented based on the facts in the record, and the Circuit Court reviewed that decision and ruled on all the legal issues presented based on that record. These issues have been conclusively decided.

This case stands in sharp contrast to those in which appellate courts have found that an order does not involve the merits because it merely addresses a procedural issue or leaves the underlying substantive claims unresolved. In those kinds of cases, remands are not appealable. *E.g.*, *Knowles*, 274 S.C. at 59 ("Class certification, essentially procedural in nature, does not involve substantial or essential legal rights which require attention prior to final judgment."); *Owens v. Canal Wood Corp.*, 281 S.C. 491-92 (1984) (order remanding case for the taking of

additional testimony was not immediately appealable); *Hunt v. Whitt*, 279 S.C. 343 (S.C. 1983) (same). Unlike those orders, which deal with purely procedural matters, the Circuit Court's order conclusively resolved the Society's challenges to of the Commission's approval of the RV Park under the Ordinance.

Indeed, it is not correct that all remand orders are not appealable. For example, in *Brown v. Greenwood Mills,* this Court found appellate jurisdiction over an order remanding a case. 366 S.C. 379, 388 (S.C. Ct. App. 2005). [1] There, this Court found appellate jurisdiction over a remand decision because, as in this case, the decision below "finally decided an issue on the merits" even though it remanded the case. *Id.* That is exactly the case here, where the Court below "finally decided" that a septic system rejected by the DHEC Board was "approved by DHEC," that the Commission did not err when it failed to take action to "preserve natural features" of the RV Park site, and that the Commission did not act illegally, arbitrarily, and capriciously when it did not provide its reasons for reaching these merits determinations, among other things. *See* April 2024 Opinion & Order (R. pp. 00001–14). This case, then, is identical in substance to *Brown* and therefore appealable now.

Another example is *Mungo v. Rental Uniform Service of Florence,* 383 S.C. 270 (2009). In that case, even though it was remanded for further proceedings, this Court held that the decision was appealable; as in *Brown*, the ruling below was "a decision on the merits because it decides with finality" a legal issue precedent to any subsequent proceedings on remand. *Id.* at 278. *Brown* and *Mungo* establish that this Court has jurisdiction *now* to review the multiple merits rulings made

[1] The Supreme Court in *Bone v. U.S. Food Service* recognized that the *Brown* decision was "implicitly overruled" because it applied the "involving the merits" standard found in S.C. Code § 14-3-330 (the relevant statutory provision for the Society's appeal) when it should have applied the South Carolina Administrative Process Act standard for appeals applicable to administrative agencies. 399 S.C. 566, 573–74 (2012). Because this case does not implicate the Administrative Process Act, *Bone* remains good law and articulates the correct standard.

by the Circuit Court which will govern on the purported remand. This Court's Order did not consider either of these decisions or the standards they lay out.

In addition, the September 2024 Order's reference to a remand does not alter the finality of the Circuit Court's merits determination because there is no mechanism under the County's Ordinance for such a remand to the Commission and because there is nothing further for the Commission to do. The Ordinance establishes a single process for major land development plans: (1) submission of an application, (2) Planning Commission review with public participation, (3) a final Commission decision based on the record before the Commission, and (4) judicial review. *See* R. pp. 01025-26. Article I contains detailed procedures governing major development plans and amendments to the Ordinance itself, but it provides no procedure for reopening, amending, or reconsidering a previously approved major development plan following judicial review. *See* R. pp. 01023-30. Thus, once a court determines that the Commission's approval violated the Ordinance, there is no statutory or regulatory process through which the Commission may revisit and amend that approval. Because no mechanism exists to implement the remand contemplated by the September 2024 Order, that order left no substantive issue awaiting future determination.

In light of the Circuit Court's decision, the proper next step is for the Appellee Blue Sky, if it wants to continue with the proposed development, to submit a new application that complies with the final decision upon appellate review. That is exactly what Blue Sky did in 2023 when it was unable to obtain public water as required by the Commission's 2021 conditional approval. This Court's Order prevents conclusive judicial review of the issues which the Circuit Court rejected, and, as a result, the parties and the Commission do not now know what a valid application under the Ordinance must contain or whether the Commission has any obligation to state the reasons for its decision.

Accordingly, the September 2024 Order squarely falls within S.C. Code Ann § 14-3-330(1), and rehearing is warranted because the Court's dismissal Order does not address this independent basis for appellate jurisdiction. Also, by failing to address the merits, the Order leaves the parties and the Commission in a legal limbo, not knowing how any subsequent application by appellee Blue Sky should address the merits issues left unresolved in this appeal or how the Commission itself should address the application.

II. In Addition, This Court Overlooked and Misapprehended Whether the Circuit Court's Order Effectively Determined the Action.

In addition, rehearing is warranted because the Court's dismissal Order did not address and misapprehended whether the Circuit Court's Order is independently appealable under S.C. Code Ann. § 14-3-330(2). South Carolina law permits immediate appellate review of an interlocutory order that "affects a substantial right and in effect determines the action *and* prevents a judgment from which an appeal may be taken or discontinues the action " *Duncan v. Gov't Emps. Ins. Co.*, 331 S.C. 484, 485 (S.C. 1994) (emphasis added); S.C. Code Ann. § 14-3-330(2). The September 2024 Order satisfies both requirements.

An order affects a substantial right when it affects "the subject matter of the litigation, such as diminishing a claim or defense that was available to the appellant prior to the order." *State v. Jackson*, 291 Neb. 908, 914 (Neb. 2015) (interpreting the same language as S.C. Code Ann. § 14-3-330(2)). Moreover, an order "in effect determines the action" when it functionally terminates the litigation or otherwise forecloses the parties from obtaining a final judgment from which an appeal may be taken. *See Dorn v. Cohen,* 418 S.C. 126, 138 (S.C. Ct. App. 2016) ("To determine whether an order is immediately appealable, we look to the probate court's order's effect on the proceedings."); *Thornton v. S.C. Elec. & Gas Corp.*, 705 S.E.2d 475, 479 (S.C. Ct. App.

2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c).").

Here, the Circuit Court's order clearly affected a substantial right because it resolved all substantive obstacles to the proposed RV Park except the issue of water service and public restrooms (comfort stations). After it failed to secure public water as required in its 2021 application, Blue Sky filed a separate 2023 application seeking approval of the development using a well-water system and without public restrooms—an application that is the subject of this appeal. R. pp. 00928–29. But if BlueSky were to obtain public water service and install public restrooms as required by the Ordinance and the Circuit Court's Order, nothing in the Circuit Court's Order would prevent the development from moving forward because the Circuit Court resolved all other issues presented in the appeal on the merits against the Society and the other Appellants.

The Circuit Court's Order also "effectively discontinued" the action, *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566 (S.C. 2012), because the Circuit Court both resolved all the issues presented by the Society and the other Appellees and, as discussed above, the Circuit Court remanded the matter to the Commission despite the absence of any statutory or procedural mechanism authorizing such a remand or any subsequent process to reconsider an application after judicial review. Because no remand procedure exists, the Circuit Court's chosen remedy is legally unworkable and leaves Appellants without any avenue to obtain relief on the substantive issues raised in this action. Practically, therefore, this case has reached a dead end.

Once more, it is important to emphasize that there are no matters left to be resolved on remand. The cases cited in the Court's Order are entirely different from the case here. *See* Order at 3 (citing *Charlotte-Mecklenberg Hosp. Auth. v. S.C. Dep't of Health & Env't Cont.*, 387 S.C. 265 (S.C. 2010) (remand for a final determination of the core legal issue not appealable and

decided under the appellate procedures in the Administrative Procedures Act, not the general appellate jurisdiction standard applicable here); *Bone v. U.S. Food Serv*., 404 S.C. 67 (S.C. 2013) (decided under the Administrative Procedures Act, not the general appellate jurisdiction statutes relevant here). Here, the Commission made a final decision on Blue Sky's application based on a factual record, and the Circuit Court made final determinations of the legal issues presented in the appeal, none of which require any subsequent factual or other proceedings. No proceedings are necessary to determine if the Commission was required to set out the rationales for its decisions, if the Commission was mandated to require Blue Sky to preserve the natural features of the site, or if Blue Sky's proposed sewage system was "approved by DHEC" when in fact the DHEC Board found it inadequate to treat the RV Park's sewage. As such, there is nothing left to be resolved on any remand, even if the county's Ordinance provided any process for proceedings on a remand—which it does not. *See Brown*, 366 S.C. at 388 (holding that a remand order is appealable when it "finally determined an issue on the merits").

The Circuit Court's Order therefore affects a substantial right and "in effect determine[d] the action," S.C. Code Ann. § 14-3-330(2), making it immediately appealable under South Carolina law. Because this Court's dismissal Order does not address this alternative basis for appellate jurisdiction, rehearing is appropriate.

III. Conclusion

Pursuant to Rule 221(a), SCACR, this Petition identifies with particularity the points that Appellants respectfully submit were overlooked or misapprehended. Specifically, the Court's Order overlooked and misapprehended (1) whether the Circuit Court's September 26, 2024 Order involved the merits of the action under S.C. Code Ann. § 14-3-330(1), and/or (2) whether the Order affected a substantial right and, in effect, determined the action under § 14-3-330(2)(a).

Because either ground independently supports appellate jurisdiction, Appellants respectfully request that the Court grant rehearing. Should the Court grant rehearing or otherwise request additional briefing, Appellants are prepared to submit a full brief addressing the factual and legal issues presented. Finally, Appellant Homeowners is also submitting a petition for rehearing. The Society adopts and incorporates into its petition any additional grounds for rehearing set forth by Homeowners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on August 19, 2026, Appellant South Carolina Native Plant Society's Petition for Rehearing was served upon all counsel of record by electronic mail.

/s/ Susie Carlson
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Re: SC Native Plant Society v. Spartanburg Co. Planning Comm. & Blue Sky Associates, LLC (Appellate Case No. 2024-001828)

Dear Ms. Kitchings,

Please find enclosed Appellant South Carolina Native Plant Society's Petition for Rehearing for filing in the above-referenced case. We have mailed the $50 filing fee to the court with a copy of this letter.

Please let me know if you have any questions regarding this filing.

Sincerely,

/s/ Susie Carlson
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Counsel for South Carolina Native Plant Society

cc: All Counsel of Record (via email)