

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

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Case No. 2010-CP-12-0595

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Mell Woods ..... Appellant,

v.

John D. Hinson, Christine E. Jones, John C. Hinson, Kathy Huffstickle,  
Robert H. Hinson, Darrell W. Hinson, Charles J. Hinson, William L. Hinson,  
Elaine H. Hensley, William C. Hinson, Jr., John Does, (1-5), Jane Does, (1-2) Respondents.

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RESPONDENTS' RETURN TO APPELLANT'S  
PETITION FOR REHEARING

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This Return is submitted pursuant to Rule 240(e), SCACR. The purpose of a petition for rehearing is not to have the case or order tried or argued to the appellate court a second time. Hon. Jean Hoefer Toal et al., Appellate Practice in South Carolina 293 (2d ed. 2002). Appellant-Petitioner (hereafter "Appellant) must demonstrate that the appellate court has overlooked or misapprehended Appellant's arguments. Id. By this standard, the petition should be denied.

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Appellant submitted two Issues for appellate review: (1) the trial court erred in relying only on arguments of Respondents' attorney when granting summary judgment in favor of Respondents, and (2) the trial court erred in granting summary judgment notwithstanding that the record contained a scintilla of evidence in support of Appellant's claims for malicious prosecution and quantum meruit.<sup>1</sup> (Appellant's Second Final Brief, p. 1.)<sup>2</sup>

Issue no. 1. With respect to Issue no. 1, Appellant argues that the trial court relied solely on arguments made by Respondents' attorney when summary judgment was granted to Respondents. Appellant's scintilla of evidence of argument is found in Issue no. 2. Respondents argued in their Brief that the "on file" materials in the trial court were more than sufficient to warrant the grant of summary judgment and that the trial court did not rely solely on arguments of counsel; rather, the trial judge's remarks indicated that he was persuaded by the arguments of Respondents' attorney with respect to the materials "on file" with the court that related to the summary judgment motion. (Respondents' Brief, p. 6-9.)

In its Opinion herein, this court acknowledged the scintilla of evidence standard, and cited authorities for principles of law that communicate that the Appellant's argument on the issue was insufficient and that there was no error of law or fact. See Rule 220(b), SCACR.

Issue no. 2. With respect to his Issue no. 2, Appellant's Second Final Brief devoted one paragraph - eight lines - *and no citation to anything in the record*, to the issue of the

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<sup>1</sup> Appellants' Issue no. 2 relates only to two of the causes of action in his Complaint, namely malicious prosecution and quantum meruit.

<sup>2</sup> Appellant's Second Final Brief was filed when portions of Appellant's first Brief were ordered stricken by Order filed June 5, 2013.

sufficient of the evidentiary showing to the trial court.. (Appellant's Second Final Brief, p. 6.) Respondents' Brief argued that the Appellant's argument was grossly deficient; was really only a conclusion and was not an argument at all; and that the issue was abandoned for failure to make a meaningful argument. (Respondents' Brief, p. 9.)

The trial court's Summary Judgment Order (R. p. 619-626) held that the Respondents' eviction action against the Appellant that was dismissed by the Magistrate's Court (the alleged basis for the malicious prosecution claim) was nevertheless commenced with probable cause and that Appellant did not present a scintilla of evidence of specific facts in admissible form to show otherwise. (R., p. 623, l. 11 to p. 624, l. 2.)

With respect to Appellant's claim for quantum meruit damages, the trial court's Summary Judgment Order held that Appellant did not present a scintilla of evidence of specific probative facts showing that the Respondents would retain an inequitable benefit if Appellant was forced to vacate the subject property.

Appellant's Second Final Brief did not cite to any evidence of record showing the trial court was wrong, and that the Court of Appeals was likewise wrong.

The Opinion herein can be said to have addressed Issue no. 2 in two respects. Rule 220(b) (2), SCACR, provides that "[t]he Court of Appeals need not address a point which is manifestly without merit." Appellant's lack of citation to the record and non-argument on Issue no. 2 falls within this category of decisions. Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue, 342 S.C. 34, 535 S.E.2d 642 (2000) (an issue that is not argued in the brief is deemed abandoned and precludes consideration on appeal.) Additionally, the Opinion indicated that Appellant had offered only conclusions and not genuine issues of fact

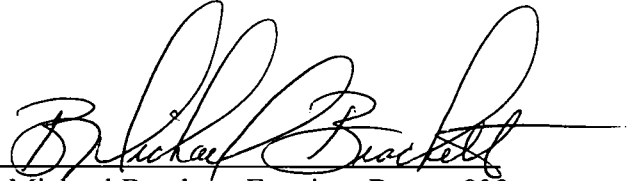
in opposition the summary judgment motion. To write that “there is plenty of sworn testimony in the record in amounts enough to defeat a summary judgment motion” is facially deficient. In appeals of civil cases, it is not the appellate court’s duty to search the record for reasons to affirm or to reverse. McClurg v. Deaton, 395 S.C. 85, 716 S.E.2d 887 (2011); Morris v. Beacham, 274 S.C. 320, 262 S.E.2d 921 (1980).

With this backdrop, the Appellant argues in his Petition for Rehearing that the Court “failed to address all of the points brought forward by the appellant.” (Petition for Rehearing, p. 1, l. 6-8.) On Issue no. 1, Appellant simply repeats his argument that the trial court granted summary judgment “on the arguments made in the trial court by respondent [sic] counsel.” (Petition for Rehearing, p. 2, l. 1-2.) Appellant makes no mention of all the materials that were “on file” for the trial court’s consideration, (Respondents’ Brief, p. 6, l. 11-19.)

With respect to Issue no. 2, the Petition for Rehearing does not state with particularity the points supposed to have been overlooked or misapprehended by the Court regarding the decision to affirm the trial court’s grant of summary judgment in favor of Respondents on the claims for malicious prosecution and quantum meruit. Appellant’s Second Final Brief devoted one paragraph - eight lines - *and no citation to anything in the record*, to this issue. The trial court’s Order indicated that Appellant had not made a showing of specific probative facts to satisfy the scintilla standard, and on appeal, Appellant did not cite in his Brief to any specific probative facts to satisfy the scintilla standard.

Conclusion

Appellant-Petitioner has not demonstrated that the points he raised in his appeal to this Court were overlooked or misapprehended in the Court's unpublished, per curiam Opinion. At best, he has only shown that he disagrees with the decisions announced therein. Appellant's Petition for Rehearing is every bit as deficient as his Second Final Brief. The Petition for Rehearing should be denied.



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Attorney for Respondents

April 18, 2014

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHESTER COUNTY  
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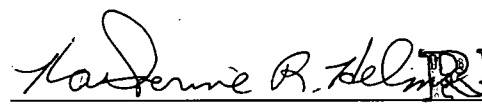
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Respondent's Certificate of Service

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I, Katherine Helms, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Respondents in the above-captioned matter, do hereby certify that I have served Appellant, pro se, with a copy of **Respondents' Return to Appellant's Petition for Rehearing** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 3<sup>18th</sup> day of April, 2014 at the following address:

Mell Woods  
P. O. Box 2603  
Lancaster, SC 29721  
Plaintiff, pro se

  
Katherine Helms

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April 18, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Woods v. Hinson et al.  
2010-CP-12-0595  
Appellate Case No. 2012-212429  
Our File No. 12085.3


Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondent's Return to Appellant's Petition for Rehearing.

By copy of this letter, a copy of the enclosed Return is being emailed to the Appellant, personally, who has appeared pro se throughout these proceedings.

Please return a clocked copy of the first page of the Return using the envelope provided.

Very truly yours,



B. Michael Brackett

cc. Robert H. Breakfield, Esquire  
Mell Woods

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