

**SUPREME COURT OF SOUTH CAROLINA**

**Number 2014-001246**

**RECEIVED**

**JUN 30 2014**

**S.C. Supreme Court**

**APPENDIX**

**Woods v. Hinson**

**Court of Appeals Number 2012 212429**

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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 Number 2010-CP-12-00595

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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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Second Final Brief of Appellant

*(With the Record references in the First Final Brief at the bottom of page 6 being redacted per the Order of the Honorable Jasper M. Cureton, date of June 05, 2013)*

Court Of Appeals Internal Tracking Number: 2012 212429

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Mell Woods  
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JUN 19 2013

SC Court of Appeals

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ISSUES PRESENTED

1. Did an abuse of discretion occur where the trial court relied only on the arguments of counsel instead of inspecting the record to find issues of fact, before entry of a summary judgment based solely on the defense counsel's arguments?

2. Did the trial court err in entering summary judgments in two claims, malicious civil prosecution, and quantum meruit, where only a scintilla of evidence is required to defeat a summary judgment motion under the ruling in Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801, (2009)?

STATEMENT OF THE CASE

Although this case is in the court of common pleas, it has roots in the probate court of Chester County. In another action appellant Mell Woods has charged that the Hinson family allowed a fraud to be perpetrated upon the Probate Court of Chester County by causing a revoked will to be admitted to probate, all the while covering up the existence of the actual will of the decedent, Mrs. Reba Hinson. The fraud upon the probate court using extrinsic tactics case, is still pending. All of this involves appellant Mell Woods, because appellant purchased some land from the decedent, Mrs. Hinson. The land was purchased in good faith, for value, and without notice of any infirmity, (R.pp. 362-367, R.pp. 636-641). Mrs. Hinson died and Ned Gregory, II, a licensed South Carolina attorney prepared a standard probate form, or petition, #300, (R. pp. 103-108, R.pp. 63-64).

In Section II of the form the direct question is asked: "Are you aware of any instrument or document amending or revoking the Will?" The answer was, "No." (R.107, R.63).

Ned Gregory, II, is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents, R.pp. 65-67. Gregory

filled out the probate form for the probate court, and then obtained the signature under oath of Robert Breakfield, the purported personal representative of the Hinson Estate, (R. 64, R.269, R.pp. 159-163).

Appellant Mell Woods received written notice of the trial court summary judgment orders on December 08, 2011, and served a Rule 59(e) Motion within 10 days thereof. The motion was also denied in a summary manner by the trial court and will be included in the Record on Appeal. Jury trial has been demanded since day one in the complaint, and with all other papers filed.

Other Information Required by Rule 208(b)(1)(c) SCACR:

This action was filed in the Chester County Court of Common Pleas on December 09, 2010; defense is general denial; the case consists of three claims: one for malicious civil prosecution, (stemming from an abandoned eviction action), one for quantum meruit, and one for outrage. The trial court granted summary judgments on all three claims on November 14, 2011. A first Notice of Appeal was served on December 30, 2011, and a second one on May 29, 2012.

\*\*\*\*\*  
RULE 242(e) SCACR  
APPENDIX page A 06.

STANDARD OF REVIEW

The grant of summary judgment is appropriate only if it is perfectly clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that movant is entitled to judgment as a matter of law.

ARGUMENT

As to Issue Number 1:

This case is not much different from the one reported at 290 S.C. 53, 348 S.E.2d 180, Gilmore v. Ivey, where the South Carolina Court of Appeals ruled that *statements of counsel* are not evidence, and that when a trial court bases a decision on argument, instead of facts, reversible error occurs. It is no different here. The hearing transcript shows, R.pp. 713-751 that the trial court never had time to even look at the evidence presented by the defense, which is in fact evidence produced by Appellant Mell Woods, in response to a subpoena. In less than twenty minutes after the defense handed the Griffin video tape to the court, the case was decided without looking at the tape, page 42 lines 9-13, R. 751, the case is ruled on based upon the argument of the defense counsel. And in fact, the court stated so: "and in making the ruling, the court adopts the arguments made by defendant on that motion." (Hearing transcript, pg. 42 lines 12-13), R. 751.

The Griffin tape shows exactly what outrage is. The tape will be in the record, R. 659.

\*\*\*\*\*  
RULE 242 (e) SCACR  
APPENDIX page A 08.

Argument as to Issue 1 continues:

Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d. 180, proscribes the  
the type of ruling made by the trial court in this case:

"In determining whether a genuine issue of material  
fact exists, a court must consider everything in  
the record -- pleadings, depositions, interrogatories,  
admissions on file, affidavits, etc."

---

Argument as to Issue 2:

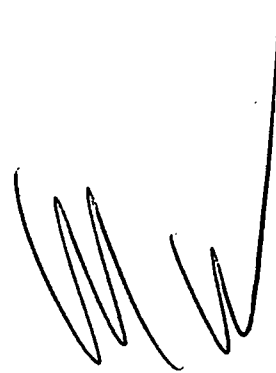
Appellant Mell Woods as an aggrieved party can testify in  
his own case, Rule 601(a) SCRE says he can, State v. King,  
367 S.C. 131, 623 S.E.2d 865, says he can, and there  
is plenty of sworn testimony in the record in amounts  
enough to defeat a summary judgment motion. Hancock v.  
Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d  
801, (2009). (References to the Record will be supplied  
as soon as the Record is assembled)

CONCLUSION

Appellant Mell Woods asks that the three rulings of the trial court be modified, and squared with South Carolina Case law.

Respectfully submitted,

This 15 day of June, 2013.



---

Mell Woods

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**Certificate of Appellant Rule 211(a) SCACR:**

Appellant hereby certifies that the final brief in this case complies with Rule 211(b) SCACR, the content is the same as the initial brief served on August 06, 2012 excepting references to the Record.

This 15 day of June, 2013.

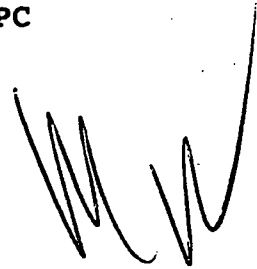
  
\_\_\_\_\_  
Mell Woods

**Proof of Service**

Trial Court Case Number: 2010-CP-12-00595  
Court of Appeals Internal Tracking Number: 2012 212429  
Woods v. Hinson

I hereby certify that I have on the 15 day of June, 2013, served the respondents with a true copy of the within and foregoing *Second Final Brief of Appellant*, and the Certificate of Appellant, Rule 211(a) SCACR by placing the documents in the U.S. Mail with sufficient postage addressed to:

Moses Koon & Brackett, PC  
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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY  
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Brooks P. Goldsmith, Circuit Court Judge

Case No. 2010-CP-12-0595

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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In filing and serving this Initial Brief and the accompanying Designation of Matter to be Included in the Record on Appeal, Respondents reserve all rights and arguments in their Motion to Dismiss Appellant's Issue on Appeal No. 2.

STATEMENT OF ISSUES ON APPEAL

1. The trial court did not rely solely on arguments of the Respondents' trial attorney and properly considered the state of the trial court record when it granted summary judgment in favor of the Respondents. (Appellant's Issue on Appeal No. 1).
2. Appellants' Issue on appeal No. 2 is not preserved for appellate review because Appellant's argument is so deficient as to constitute an abandonment of the issue.

STATEMENT OF THE CASE

Respondents object to Appellant's Statement of the Case because it violates Rule 208(b)(1)(C), SCACR, by including argument and contested matters from other cases.

Appellant filed this action against the members of the Hinson family on December 9, 2010. (R. p. 611-619). Appellant alleges that the Hinson family, as descendants of Levie and Reba Hinson and as owners of a neighborhood on Fishing Creek Lake are responsible for the conduct of one Richard Van Griffin, alleged to have then been occupying a residence in the neighborhood. Respondents generally denied Appellant's allegations and alleged counterclaims that are not relevant to these appeal proceedings. (R. p. 648-652 and 653-657). The timing of the Answers was the product of the dates of service of process on the Respondents.

Following pretrial discovery, the Respondents moved for summary judgment. (R.p. 627-628.) Respondents' Motion for Summary Judgment was heard on November 9, 2011 by the Honorable Brooks P. Goldsmith. By Order dated November 14, 2011, the Motion for Summary Judgment was granted. (R.p. 619-626.)

Appellant served his Rule 59(e) Motion to Alter or Amend Summary Judgment on December 19, 2011. (R.p. 588-595.)

On December 30, 2011, before his Rule 59(e) motion was decided, Appellant served his Notice of Appeal. (R.p. 578-579.)

On or about January 7, 2012, without leave of court, Appellant filed and served a "First Amended Notice of Appeal." (R.p. 580-581.)

By letter to the Court of Appeals dated January 25, 2012, Appellant asked that his appeal be dismissed without prejudice to allow his Rule 59(e) motion to be heard in the Circuit Court. (R.p. 584-585.)

By Order filed February 29, 2012, this Court granted Appellant's motion for dismissal of appeal without prejudice. (R.p. 586.)

On March 13, 2012 Respondents served their Return to Appellant's Rule 59(e) motion. (R.p. 596-600.)

By Remittitur filed March 22, 2012, the case was remitted to the Circuit Court. (R.p. 587.)

By Order filed April 25, 2012, the Circuit Court denied Appellant's Rule 59(e) motion. (R.p. 629.)

On May 29, 2012 Appellant filed and served a Second Amended Notice of Appeal.

#### STANDARD OF REVIEW

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court. Bass v. Gopal, Inc., 395 S. C. 129, 716 S.E.2d 910 (2011). Rule 56(c), SCRPC, provides that summary judgment may be granted if a review of all documents submitted to the court shows there is no genuine issue as to any material fact, and the moving party is entitled to judgment

as a matter of law. In determining whether a genuine issue of material fact exists, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Bass v. Gopal, Inc., *supra*. Where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a scintilla of evidence to withstand a motion for summary judgment. *Id.*

### STATEMENT OF THE FACTS

The Appellant has commenced four actions in either the Chester County Probate Court or Circuit Court, all having to do with the Estate of Reba Hinson and Appellant's claim that he is entitled to exercise an alleged purchase option for a lot of land he leased from the decedent Reba Hinson. All four cases have thus far resulted in Orders favorable to the above-captioned Respondents and their agent, and to the Personal Representative of the Reba Hinson Estate.

Case 1. 2010-CP-12-0168 (tracking no. 2011-191876). Reba Hinson died in January 2007. Plaintiff filed three claims against the Estate of Reba Hinson. Those claims were dismissed in case no. 2010-CP-12-0168. The claim for nuisance damages was dismissed by summary judgment, and Appellant's appeal of the summary judgment order to the Court of Appeals is pending under the above tracking number. Initial briefs have been filed.

Case 2. 2010-CP-12-0201 (tracking no. 2011-201066). Appellant tried to insert himself into the administration of the Reba Hinson estate by seeking to have the personal representative removed and advocating that the probate court was probating the wrong last will of Reba Hinson. The probate court denied Appellant's petitions and

motions<sup>1</sup>, and the circuit court, sitting as an appellate court, affirmed the probate court's Order. Appellant has appealed the case to this court, and final briefs have been filed.

Case 3. 2010-CP-12-0595 (tracking no. 2012-206469); the above-captioned tort case.

Case 4. 2011-CP-12-0323 (tracking no. 2012-212330) is a quiet title or trespass to try title action [Respondent describes it as a will construction case] in which Appellant seeks a construction of Reba Hinson's spouses's last will in an effort to show that Reba Hinson owned fee title to the lot in dispute rather than having owned a life estate. The Circuit Court entered summary judgment in favor of the Hinson family. (Judge Goldsmith Order dated December 29, 2011.) Appellant's motion for reconsideration was denied in April, 2012, and Appellant has filed an appeal in this court.

#### SUMMARY JUDGMENT LAW

Summary Judgment. Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP; Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001); South Carolina Elec. & Gas v. Town of Awendaw, 351 S.C. 491, 570 S.E.2d 542 (Ct. App. 2002) In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Osborne v. Adams, supra.; Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003).

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<sup>1</sup> One of the grounds for the probate court's ruling was that the Plaintiff was not a devisee in any version of Reba Hinson's last will and therefore is a stranger to the Reba Hinson estate and has no standing to insert himself into matters of estate administration.

A fact is material if it is “outcome determinative” under the applicable law, that is, if its existence in a case will have some impact in deciding the facts of the case. Big O Tire Dealers, Inc. v. Big O Warehouse, 741 F.2d 160 (7<sup>th</sup> Cir. 1984); PPG Indus. V. Orangeburg Paint & Decorating Center, 297 S.C. 176, 375 S.E.2d 331, 332 (Ct. App. 1988). When the facts, and all reasonable inferences to be drawn from the underlying facts, are viewed in a light most favorable to the non-moving party, and the record nevertheless reveals that the opposing party would not prevail under any discernable circumstances, summary judgment is appropriate. Kreuzer v. American Academy of Periodontology, 735 F.2d 1479 (D.C. Cir. 1984). However, a nonmoving party must do more than show a metaphysical doubt about the material facts and must set forth specific facts showing a genuine issue for trial. Russell v. Wachovia Bank, 353 S.C. 208, 578 S.E.2d 329, 335 (2003).

To survive a summary judgment motion by the defendant in a lawsuit, the plaintiff must offer some evidence that a genuine issue of material fact exists for each element of the claim at issue except for those elements that are either uncontested or agreed to by stipulation. Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011). Summary judgment can be entered against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be “no genuine issue as to any material fact,” since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

ARGUMENT

1. **The trial court did not rely solely on arguments of the Respondents' trial attorney and properly considered the state of the trial court record when it granted summary judgment in favor of the Respondents. (Appellant's Issue on Appeal No. 1).**

Pursuant to Rule 56(c), SCRCF, "summary judgment motions and, inferentially, supporting materials [are required] to be on file when they are to be relied upon at a summary judgment motion hearing." Loyd's Inc. v. Good, 306 S.C. 450, 412 S.E.2d 441 (Ct. App.1991). This would also necessarily apply to materials in opposition to a summary judgment motion. The "on file" requirement is satisfied when (1) the document is filed with the clerk of court prior to the hearing; or (2) the document is delivered to and received by the trial judge at the time of the hearing. Id.

The materials that were "on file" at or during the November 9, 2011 summary judgment hearing were:

- Plaintiff's deposition transcript (R.p. 619, text lines 9-13; and p. 714, l. 12-20);
- The video disc or tape made by Appellant (R.p. 619, text lines 9-13; and p. 714, l. 12-20);
- Affidavit of Robert Breakfield, Personal Representative (R.p. 619, text lines 9-13; and p. 715, l. 2-9); and
- Plaintiff's Affidavit (R.p. 609; and p. 619, text lines 12-13.)

The Index page of the November 9, 2011 hearing transcript shows that "There were no exhibits marked." (R.p. 712.)<sup>2</sup>

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<sup>2</sup> The November 9, 2011 hearing transcript actually includes summary judgment arguments in two cases - the case *sub judice* and case no. four above (2011-CP-12-0323.) . The transcript contains 48 pages; pages 3 through 20 relate to the summary judgment motion in the above-captioned case, and pages 24 through 42 relate to the summary judgment motion in case no. four above.

Appellant's Complaint in the case was not verified. (R.p. 611-619.)

In the Order Granting Summary Judgment, the trial court noted that the Appellant's affidavit "contains nothing more than conclusory allegations that are not entitled to any weight when raised in opposition to a motion for summary judgment." (R.p. 620, 1. 1-2.) The Plaintiff's Response to the Twenty Page Memorandum of Law Served by Defendants on November 4, 2011 was actually a joint response to motions pending in three cases, one of which was the summary judgment motion herein. The caption on the Response bears three case numbers. (R.p. 601-610) The affidavit portion of the Appellant's Response, found on page 9, reads in its entirety:

After first being duly sworn, Mell Woods deposes and makes the following affidavit of his own personal knowledge:

Affidavit

Mell Woods is the true owner of the small amount of land described in the trespass to try title case;

After tacking the time of adverse possession by Mell woods, to that of Mrs. Reba Hinson, the total amount of adverse possession time is twenty six years;

Robert Breakfield lied to the Chester County Probate Court in order to get control of the Hinson Estate;

Mell Woods has examined the Probate Court documents marked as Exhibit A, side by side, with the ones in the court file, and swears that the copies and the originals, are one and the same.

Further, Affiant saith not.

(R.p. 609)

Not one of the four statements in the affidavit relate to the above-captioned tort case. Exhibit A to the affidavit is the Form 300 filed in the Chester County Probate Court in the Estate of Reba Hinson. Neither the Estate nor its personal representative is a party to this case.

Appellant appears to argue that the trial court judge could only have learned the content of the video tape by taking the time to watch the tape. What the judge needed to know was contained in

Appellant's deposition transcript where the content of the video tape was included verbatim. (R.p. 714, l. 12 to p. 715, l. 1; and R.p. 672, sub- p. 39, l. 12 to p. 676, sub-p. 53, l. 25.) Two different incidents were taped, one during the evening hours and one the next day. (R.p. 673, sub- p. 42, l. 4-13.) It is admitted that the behavior of the person on the tape, Richard Van Griffin, was obnoxious, but Appellant admitted during deposition questioning on the subject of the video that with respect to the evening incident, none of the Respondents were with Van Griffin who was there by himself, and Van Griffin did not mention any of the Respondents' names during his offensive remarks (R.p. 673, sub-p. 43, l. 7 to p. 44, l. 11.) Appellant admitted that Van Griffin was drunk. (R.p. 673, sub-p. 44, l. 2-11).

With respect to the second incident, the next day, Appellant again admitted that none of the Respondents were present and that Van Griffin did not mention any of the Respondents. (R.p. 673, sub-p. 44, l. 20 to p. 674, sub-p. 48, l. 5.)

When asked about evidence showing that the Respondents' had anything to do with Van Griffin's behavior on the two occasions on tape, Appellant said that Van Griffin had mentioned some connection with Respondent Danny Hinson "previously." (R.p. 673, sub-p. 43, l. 19-24 and p. 674, sub-p. 47, l. 12-22). Of course, what Van Griffin said, if anything, to the Appellant outside of court is hearsay, when offered by the Appellant, and is not proper evidence to consider when deciding a summary judgment motion. Materials used to support or oppose a summary judgment motion must set forth facts that would be admissible in evidence at trial. Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); Moss v. Porter Bros., Inc., 292 S.C. 444, 357 S.E.2d 25 (Ct. App. 1987).

When the trial judge said that he was granting the Respondents' summary judgment motion and in doing so he was adopting the arguments made by the Respondents (R.p. 751, l. 7-15), he was

saying 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.

The trial court record amply shows that the trial court did not rely solely on arguments of Respondents' attorney when granting the motion for summary judgment, but that the court also relied on and identified the materials "on file" that the parties submitted with respect to the motion.

**2. Appellants' Issue on Appeal No. 2 is not preserved for appellate review because Appellant's argument is so deficient as to constitute an abandonment of the issue.**

An appellate court will decline to consider an argument that is so conclusory as to be an abandonment of the particular issue on appeal. S. C. Dept. of Probation, Parole & Pardon Servs. v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (conclusory arguments constitute an abandonment of the issue on appeal.)

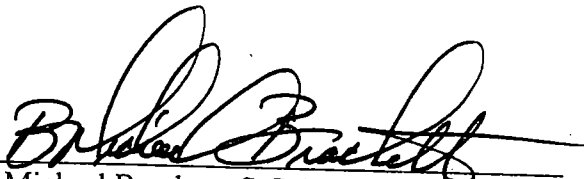
Appellant's purported "Argument" is found on page six of his Initial Brief - one paragraph; eight lines; no citation to anything in the record. This violates the letter and the spirit of Rules 208(b)(1)(D) and 208(b)(4), SCACR. What Appellant has provided is a conclusion, not argument. He does not identify a single piece of admissible evidence that was "on file" with the trial court that would require the Respondents' motion for summary judgment to be denied. Materials used to support or oppose a summary judgment motion must set forth facts that would be admissible in evidence at trial. Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); Moss v. Porter Bros., Inc., 292 S.C. 444, 357 S.E.2d 25 (Ct. App. 1987).

Respondents cannot possibly respond in this brief, which is the only brief allowed to the Respondents in the appeal process, to the general conclusion that there is “plenty of sworn testimony in the record.”

CONCLUSION

On Issue on Appeal no. 1, the trial court’s Order Granting Defendants’ Motion for Summary Judgment should be affirmed as having been based on materials on file with the court and not based solely on arguments of counsel.

If not earlier dismissed, Issue on Appeal no. 2 should be deemed abandoned for failure to make proper argument.



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[mbrackett@mkb-law.com](mailto:mbrackett@mkb-law.com)  
Attorney for Respondents

June 20, 2013

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

---

Case No. 2010-CP-12-0595

---

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.

---

RULE 211(a)  
CERTIFICATE OF COUNSEL

---

The undersigned certifies that Respondent's Final Brief complies with Rule 211(b),  
SCACR.

  
B. Michael Brackett, S.C. Bar # 838  
Moses & Brackett, PC  
P.O. Box 100261  
Columbia, SC 29202  
803.461.2312  
Attorney for Respondents

June 20, 2013

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 Number 2010-CP-12-00595

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Mell Woods . . . . . Appellant,

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John D. Hinson, Christine E. Jones,  
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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.

---

Reply Brief

Court Of Appeals Internal Tracking Number: 2012 212429

---

Mell Woods  
P.O. Box 2603  
Lancaster, SC 29721

Moses Koon & Brackett, PC  
B. Michael Brackett  
Attorney for Respondent  
Post Office Box 100261  
Columbia, SC 29202

JUN 19 2013  
S. L. O. J. A. W.

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<u>McManus v. Bank of Greenwood</u> , 171 S.C. 84, 171 S.E. 473 (1933)	02

The Record clearly shows (Hearing Transcript, pg. 42 lines 12-13), R.751 that the trial court relied only on what the Respondent Counsel Mr. Brackett's statements of fact of what was on file in the case instead of looking at the record; "and in making this ruling, the court adopts the arguments made by defendant on that motion."

Mr. Brackett tries to get around what the trial court actually stated on the record by trying to say the court meant something else, when it is obvious from the record that the trial court only relied on argument instead of evidence. *Statements of counsel are not evidence*, and where a trial court bases a decision on argument, instead of facts, reversible error occurs; Gilmore v. Ivey, 290 S.C. 53, 348 S. E.2d 180 and McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933).

Respectfully submitted,

This 05 day of January, 2013.



Mell Woods

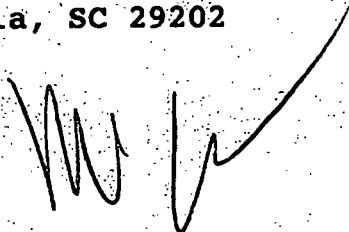
P.O. Box 2603  
Lancaster, SC 29721

Certificate of Service:

I hereby that certify that I served the Respondents with a true copy of the within and foregoing Reply Brief by placing a copy of the Brief in the U.S. Mail with sufficient postage addressed to the counsel of record for respondents to wit:

B. Michael Brackett  
Moses Koon & Brackett, PC  
P.O. Box 100261  
Columbia, SC 29202

This 05 day of January, 2013.



Mell Woods

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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.

Appellate Case No. 2012-212429

---

Appeal From Chester County  
Brooks P. Goldsmith, Circuit Court Judge

---

Unpublished Opinion No. 2014-UP-158  
Submitted February 1, 2014 – Filed April 2, 2014

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**AFFIRMED**

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Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of  
Columbia, for Respondents.

---

**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012) ("When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCF; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (holding when the underlying action is proved by a preponderance of the evidence, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment"); *S. Glass & Plastics Co.*, 399 S.C. at 490, 732 S.E.2d at 209 ("In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party."); *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 779 (Ct. App. 2010) ("As Rule 56(e), SCRCF, states, a party may not rest upon the mere allegations or denials of his pleading[s]." (alteration in original) (internal quotation marks omitted)); *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment."); *Kase v. Ebert*, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (Ct. App. 2011) ("To survive a summary judgment motion by the defendant in a lawsuit, . . . the plaintiff must offer some evidence that a genuine issue of material fact exists for each element of the claim at issue except for those elements that are either uncontested or agreed to by stipulation.").

**AFFIRMED.**<sup>1</sup>

**WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

71914

Appeal from Chester County  
Court of Common Pleas  
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2010-CP-12-00595

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.

PETITION FOR REHEARING Rule 221(a), SCACR

Court Of Appeals Internal Tracking Number: 2012-212429

RECEIVED  
APR 17 2014  
SC Court of Appeals

Mell Woods  
P.O. Box 2603  
Lancaster, SC 29721

Please Take Notice that the appellant herein hereby moves for rehearing of the above captioned Appeal pursuant to Rule 221, SCACR. The basis to support the Petition is contained within the following Memorandum:

SUPPORTING MEMORANDUM

In the *Per Curiam* decision entered for this Appeal the Court of Appeals failed to address all of the points brought forward by the appellant, Mell Woods, and in fact did not address the arguments made by the respondents.

The *Per Curiam* decision makes no references to the Record in the case, or to the facts either. Part of the Record may be missing from the case file. The Record is in two Volumes, but the C-Track Public Access system shows only one volume. In any event substantial grounds for a jury trial do exist and have been overlooked by the Court of Appeals.

Out of Respect for the Court of Appeals, appellant does not say that the Court of Appeals "misapprehended" this case but does say that the *Per Curiam* opinion drafted by the law clerks is pure *dicta* and does not relate to the facts or the Record in this case whatsoever.

07/20/11

This case has been decided on the arguments made in the trial court by respondent counsel. There is no question about how the case was decided by the trial court, because the trial judge stated from the Bench:

"and in making the ruling, the court adopts the arguments made by defendant on that motion." (Hearing transcript, pg. 42 lines 12-13), R. 751.

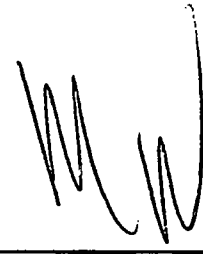
Statements of counsel are not evidence, and when a trial court bases a decision on argument, instead of facts, reversible error occurs. Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180; also, in regard to statements of counsel (Headnote 6) from McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933).

Petitioner and appellant Mell Woods hereby adopts by reference the entire Record in this case, *both Volumes* of the Record, the final Appellant Brief, Reply Brief of the Appellant, and the papers and Briefs filed by respondent, and incorporates the listed documents as part of this Petition.

Respectfully submitted,

[Signature and Certificate of Service Follow]\*\*\*\*\*

This 17 day of April, 2014.



Mell Woods

P.O. Box 2603  
Lancaster, SC 29721

**RECEIVED**  
APR 17 2014  
SC Court of Appeals

Certificate of Service

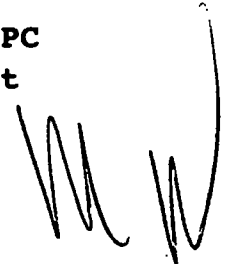
Woods v. John D. Hinson, others

Trial Court Case Number: 2010-CP-12-00595

Court of Appeals Internal Tracking Number: 2012 212429

I hereby certify that I have on the 17 day of April, 2014, served the respondents with a true copy of the within and foregoing *Petition for Rehearing*, by placing the copy in the U.S. Mail with sufficient postage addressed to:

Moses Koon & Brackett, PC  
C/O: B. Michael Brackett  
P.O. Box 100261  
Columbia, SC 29202



Mell Woods

P.O. Box 2603  
Lancaster, SC 29721

-3-

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2010-CP-12-0595

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.

RESPONDENTS' RETURN TO APPELLANT'S  
PETITION FOR REHEARING

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.

RECEIVED

APR 21 2014

SC Court of Appeals

\*\*\*\*\*  
RULE 242 (e) SCACR  
APPENDIX page A 38.

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 cour.. (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

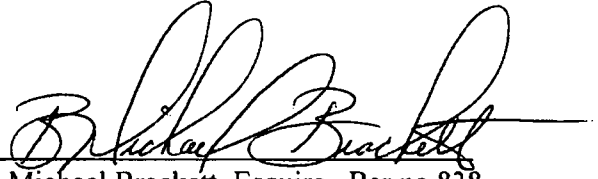
in opposition the summary judgment motion. To write that “there is plenty of sworn testimony in the record in amounts enough to defeat a summary judgment motion” is facially deficient. In appeals of civil cases, it is not the appellate court’s duty to search the record for reasons to affirm or to reverse. 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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[mbrackett@mkb-law.com](mailto:mbrackett@mkb-law.com)  
Attorney for Respondents

April 18, 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2010-CP-12-0595

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.

Respondent's Certificate of Service

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 R. Helms* RECEIVED  
Katherine Helms  
APR 21 2014

**RECEIVED**

APR 29 2014

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

**Appeal from Chester County  
Court of Common Pleas  
Brooks P. Goldsmith, Circuit Court Judge**

**Case Number 2010-CP-12-00595**

**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.**

**Rule 240(f) SCACR Reply**

**Court Of Appeals Internal Tracking Number: 2012 212429**

**Mell Woods  
P.O. Box 2603  
Lancaster, SC 29721**

1. **Contrary to the respondent counsel's assertion that appellant failed to cite the Record in support of the Argument as to Issue 2 (in the final Brief) -- page two of the Reply Brief is pasted on the next page, which shows the citation to the Record by page number; in addition this reference to the Record was first made in the Initial Brief filed on August 09, 2012, page 5 of the Initial Brief, by Hearing Transcript page numbers.**

[pg. 1 of this Rule 240(f) SCACR Reply]

-- pasted from pg. 2 of the Reply Brief --

The Record clearly shows (Hearing Transcript, pg. 42 lines 12-13), R.751 that the trial court relied only on what the Respondent Counsel Mr. Brackett's statements of fact of what was on file in the case instead of looking at the record; "and in making this ruling, the court adopts the arguments made by defendant on that motion."

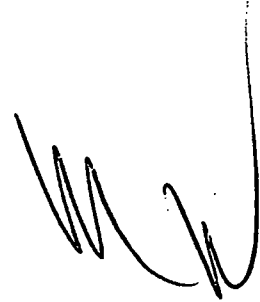
Mr. Brackett tries to get around what the trial court actually stated on the record by trying to say the court meant something else, when it is obvious from the record that the trial court only relied on argument instead of evidence. Statements of counsel are not evidence, and where a trial court bases a decision on argument, instead of facts, reversible error occurs; Gilmore v. Ivey, 290 S.C. 53, 348 S. E.2d 180 and McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933).

[pg. 2 of this Rule 240(f) SCACR Reply]

2. Petitioner and appellant Mell Woods hereby adopts by reference the entire Record in this case, both Volumes of the Record, the final Appellant Brief, Reply Brief of the appellant, Petition for Rehearing, also the papers and Briefs filed by respondent, and incorporates the listed documents as part of this Rule 240(f) SCACR Reply.

Respectfully submitted,

This 25 day of April, 2014.



Mell Woods

P.O. Box 2603  
Lancaster, SC 29721

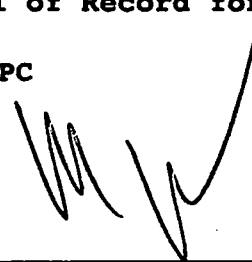
CERTIFICATE OF SERVICE:

Woods v. John D, Hinson, others

Trial Court Case Number: 2010-CP-12-00595  
Court of Appeals Number 2012-212429

I hereby certify that I have on the 25 day of April, 2014, served the respondents with a copy of the within and foregoing Reply to the Return, by placing the copy in the U.S. Mail with sufficient postage addressed to the Counsel of Record for respondents, to wit:

Moses Koon & Brackett, PC  
C/O B. Michael Brackett  
P.O. Box 100261  
Columbia, SC 29202



Mell Woods

P. O. Box 2603  
Lancaster, SC 29721

# The South Carolina Court of Appeals

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.


Appellate Case No. 2012-212429

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## ORDER

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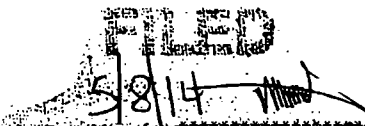
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

  
\*\*\*\*\*  
RULE 242 (e) SCACR  
APPENDIX page A 48.