

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-39-01849
Appellate Case No. 2013-001628

Town of Six Mile, South
Carolina,

Respondent,

v.

Dan Ward,

Appellant.

INITIAL BRIEF OF RESPONDENT

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OCT 31 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

Appellant's Initial Brief fails to articulate any specific statement of issues on appeal. However, from reviewing Appellant's filing as a whole, it appears he is dissatisfied with the Trial Court on four points:

- I. Did the Trial Court err in the physical arrangement of the lawyers and litigants during the hearing phase of the case?
- II. Did the Trial Court err in conducting a nonjury summary judgment hearing in lieu of proceeding directly to a jury trial?
- III. Is it relevant to this appeal that a magistrate's court dismissed a criminal citation against Appellant on some of the same facts? Is it relevant to this appeal that Appellant filed a grievance against both his attorney and counsel for Respondent?

STATEMENT OF THE CASE

Respondent brought this action against Appellant pursuant to the Uniform Declaratory Judgment Act (S.C. Code Section 15-53-10 et seq.) asking the Trial Court to declare Appellant subject to the Respondent's Building Codes, Business License, and Zoning Ordinances. Respondent also asked the Court for Injunctive Relief in order to effectuate any determinations the Court made as a part of its declaration of the rights and obligations of the parties.

At the conclusion of the discovery process, Respondent moved for Summary Judgment on its Declaratory Judgment causes of action and its prayer for Injunctive Relief. After oral arguments and the submission of written briefs, the Trial Court issued an Order, dated May 29, 2013, granting Summary Judgment to Respondent.

Appellant then filed a Motion to Alter or Amend pursuant to SCRCP 59(e). After the submission of written materials by both parties, the Trial Court issued its Order, dated July 12, 2013, correcting its previous order in one respect, but reaffirming declaratory and injunctive relief.

Appellant then moved for the Trial Court's Supersedeas of its own Order, which was subsequently denied.

Appellant filed a Notice of Intent to Appeal to this Court, followed by a Petition for Writ of Supersedeas, asking this Court to supersede the Trial Court's Order granting injunctive relief. This Court issued its Order, dated August 21, 2013, denying Supersedeas. Subsequently, Respondent moved for a Rule to Show Cause before the Trial Court for the enforcement of its May 29th Order granting Summary Judgment. The Trial Court granted Respondent the relief requested, and by Order dated October 3, 2013, required Appellant to comply with its original Order within thirty days. Appellant's counsel then moved to be relieved, and both the Trial Court and this Court granted that relief.

Appellant, now *pro se*, then refiled his previous Petition for Writ of Supersedeas, and asked this Court to reconsider same. The Court again denied to issue the Writ. This appeal follows.

STATEMENT OF FACTS

1. Appellant is the owner of two parcels of land, identified by Pickens County tax parcel numbers 4058-07-69-5660 and 4058-07-69-3858, which are within the municipal boundaries of the Town of Six Mile, South Carolina.

2. The records of the Secretary of State, and public meeting minutes of the Six Mile Town Council, indicate that the Town annexed property, including the subject property, in 1965

under an annexation method authorized by state statute at that time.

3. For reasons unknown to either party, later zoning maps of the Town of Six Mile show a portion of the subject property as not within the municipal limits, but there is no record of any reduction of the corporate limits (“de-annexation”) to justify this omission.

4. In the period of time leading up to October of 2009, Appellant’s property was vacant, other than an old, unused, shed type structure located some distance off the road on a portion of the property.

5. In October of 2009, Appellant began constructing two metal storage sheds, intended for commercial purposes, on a portion of the subject property. Respondent requested a stop work order on these shed structures because Appellant did not have a building permit.

6. Respondent then sought enforcement of its business license and zoning ordinances, which provide procedure for the proper location and conduct of business within its municipal limits.

7. After notice of the business license and zoning process, but without any effort to comply with same, Appellant began moving salvage buildings for resale onto the subject property. Appellant asserted that his property was not within the municipal limits, and that regardless, he was not subject to the town’s ordinances.

ARGUMENT

I. Did the Trial Court err in the physical arrangement of the lawyers and litigants during the hearing phase of the case?

In his first argument on appeal, Appellant claims that his rights were violated because he was seated in the audience during the motion hearings in this case, and not at the counsel table with his attorney. Appellant does not demonstrate how this seating arrangement was prejudicial to his rights,

and seems to indicate that he was directed to sit in the audience by his own attorney. Regardless, no objection was made by him or his lawyer to this seating arrangement during the hearing, and is therefore not preserved for review by this Court. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating “an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review”).

II. Did the Trial Court err in conducting a nonjury summary judgment hearing in lieu of proceeding directly to a jury trial, and was the proper standard applied?

Appellant also asserts that a “judge hearing” was held without his permission. He claims that the “judge hearing did not allow him or his counsel any cross examination.” Apparently, Appellant is referring to the Trial Court’s hearing on Respondent’s Motion for Summary Judgment. Summary Judgment is authorized by Rule 56 SCRPC, which provides, in part, that judgment can be rendered for any party based on “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits.” No right to live testimony or cross examination is provided in the Rule.

Instead the Trial Court was specifically authorized to grant summary judgment if the record of the case showed that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Toomer v. Norfolk S. Ry.*, 344 S.C. 486, 489, 544 S.E.2d 634, 635 (Ct. App. 2001).

In the instant case, Appellate disputed that much of his property is within the town, although he offered no evidence of such other than the Town’s admittedly erroneous zoning map, along with unsubstantiated stories he claims to have heard. When asked in his deposition for any documentation of his assertions, he answered:

“Well, the only one that’s – the only one that could have known anything would have been the guy that’s in the grave since 1976 and I couldn’t get him to talk.” (Deposition of Ward, page 47-48)

Stated another way, Appellate has no documentation that he is outside the municipal limits. He simply believes that his property is not in the Town. This belief, without any material facts to substantiate it, is insufficient to survive a motion for summary judgment. "When opposing a summary judgment motion, the nonmoving party must do more than 'simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003).

Appellant failed to come forward with any facts, other than a blanket denial, that established his property was not included in the 1965 annexation. He failed to produce any evidence of a valid challenge to the 1965 annexation of his property. He also failed to establish that any petition or election to de-annex the property ever occurred. All of the evidence presented by Appellant was either inadmissible as hearsay, or, even if established, was not probative as to a valid statutory means of reducing the corporate limits of the Town. As such, the grant of Summary Judgment was appropriate. See: *Toomer* p. 489.

III. Is it relevant to this appeal that a magistrate’s court dismissed a criminal citation against Appellant on some of the same facts? Is it relevant to this appeal that Appellant filed a grievance against both his attorney and counsel for Respondent?

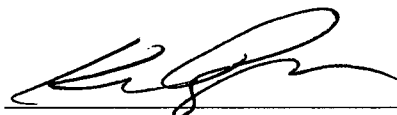
As for the Appellant’s final issues, neither are proper grounds for an appeal. Whether or not the Appellant was charged with a criminal offense in Magistrate’s Court related to these underlying

facts, or if those charges were ultimately dismissed, has any bearing on the appropriateness of the grant of civil relief in the instant case. Similarly, whether or not Appellant is satisfied with his prior lawyer, or with counsel for Respondent, is irrelevant to the determination currently before this Court. Regardless, neither issue was raised by the Appellant or his counsel in the trial stage of this case, and is therefore not preserved for appellate review. *Wilder*, p.732.

CONCLUSION

For the foregoing reasons, Respondent requests that the Trial Court's grant of summary judgment and injunctive relief be upheld, and that this Appeal be dismissed.

Respectfully submitted,



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October 30, 2014
Liberty, South Carolina

Other Counsel of Record:
Appellant, *pro se*

Excerpts (2 pages) from Deposition of Danny
Ward, Appellant

1 out, because what he did when they annexed that, that's
2 the reason he moved that store from there over to that
3 section over there is because he knew that this section
4 was -- they let him pond this area evidently, because
5 of him moving that store. He would have never moved
6 that store -- he would have left that store there if it
7 was going to be in the -- out of the city. His thing
8 was, I'm going to be out of the city, so he moved it in
9 to that section, that one tract; it's all one tract.

10 Q. well, this line that you've drawn here, then, because
11 I'm misunderstanding what you're saying and I want you
12 and your lawyer to help me here, that line, what does
13 that line represent then?

14 A. well, it just -- it's just a survey that they surveyed.
15 Randy told me they didn't even put no metal pins down
16 when they did that. That's a unusual survey, but
17 that's what the city has took and took that one map and
18 that's the gospel. They have said that this is it;
19 this is -- this is the city limits, and that's not
20 true. He got these properties donated -- doughnuted
21 because it wasn't in the city.

22 Q. Okay, have you gotten any documentation, anybody given
23 you anything in writing, that shows that?

24 A. well, the only one that's -- the only one that could
25 have known anything would have been the guy that's in

1 the grave since 1976 and I couldn't get him to talk.

2 Q. That's probably best.

3 All right, let me look -- you've got me interested
4 again, and you do this to me. Okay, at some point the
5 city contacted you; the town. I keep saying the city.
6 The town contacted you about your business there. Do
7 you remember when you got the first contact from them?

8 A. It was sometime around October of '06 -- I mean -- I'm
9 thinking it's October of '09. I'm not definite on
10 that. It was after I got the stop order on it.

11 Q. Who gave you the stop order?

12 A. The county.

13 Q. Okay. So you get a stop order from the county and then
14 you get contacted from the city. Tell me about that.

15 A. Well, they were writing letters -- we had been talking
16 -- this had nothing to do with zoning or not zoning; it
17 was about a sidewalk. They was wanting to come on this
18 property on A and C and put a sidewalk on one side or
19 the other, and I was going to give 'em that. And they
20 were going to come over here and do some -- get some
21 lines changed and different things. But after I got to
22 looking at it, they was going to have to build up on --
23 if they come on this side, they was going to have to
24 build up so much that it would have interfered -- I
25 would have had to put the houses down here and I

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the Respondent's **Return to Appellant's Petition** upon the Appellant on this 30th day of October, 2014, by depositing a copy of same for overnight commercial delivery, postage prepaid, and addressed as follows:

Dan Ward
281 Cedar Hill Road
Six Mile, SC 29682


Kenneth Roper

Liberty, South Carolina
October 30, 2014



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October 30, 2014

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RE: Town of Six Mile, Respondent v. Dan Ward, Appellant
Appellate Case No. 2013-001628

Dear Ms. Kitchings,

Please find enclosed for filing an original and seven (7) copies of Respondent's Initial Brief in the above-captioned matter, as well as our Certificate of Service. Please file the original and six of the copies, returning the extra copy to us in the envelope provided.

By copy of this letter along with all attachments, our Initial is being served on the Appellant, Mr. Ward.

Please contact me if you have any questions regarding this matter.

Sincerely,

Ken Roper

w/enc.

Cc: Mr. Dan Ward
281 Cedar Hill Road
Six Mile, SC 29682

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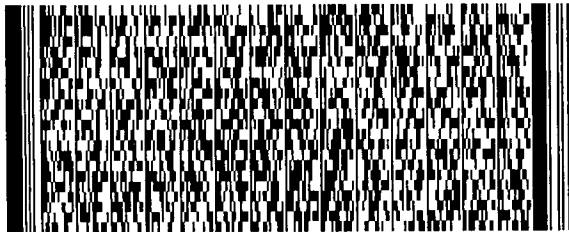
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