

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2015-001557

RECEIVED

AUG 17 2015

S.C. SUPREME COURT

Elizabeth A. Crotty and James K. Orzech *Petitioners,*

v.

Windjammer Village of Little River, South Carolina,
Property Owners' Association, a South Carolina
Eleemosynary Corporation *Respondent.*

**RESPONDENT'S RETURN TO
PETITION FOR WRIT OF CERTIORARI**

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Pursuant to Rule 242(f), SCACR, Respondent Windjammer Village of Little River, South Carolina, Property Owners' Association makes this Return to the Petition for Writ of Certiorari filed by the Petitioners, Elizabeth A. Crotty and James K. Orzech, and respectfully moves this Honorable Court to deny the said Petition.

Rule 242(b), SCACR sets forth the general considerations for granting a writ of certiorari. None of the five reasons set forth in the Rule are apposite or addressed by the Petitioners. In addition, there are no other special and important reasons argued by the Petitioners as to why a writ of certiorari should be granted: they merely dislike the factual decisions of the trial court and the Court of Appeals, and wish to re-litigate the entire lawsuit before the Supreme Court on a writ of certiorari.

There is no novel question of law raised by the Petitioners in their Petition, a ground set forth in Rule 242(b)(1), SCACR. The Petitioners assert that the primary question presented for this Court's review is whether the Court of Appeals incorrectly found that the Petitioners did not appeal the trial court's finding that their Rule 60(b), SCRCR Motion was not timely filed within one year of the signing and entry of the trial court's Final Order. (Pet. p. 2, ¶ 1.)

The Petitioners reiterate their argument that they did not file a Rule 60(b), SCRCR Motion in the trial court, but that because the trial judge permitted them as *pro se* litigants to appear and argue before him more than one year after the signing and entry of the Final Order, the trial court was able to and did waive the Rule 60(b),

SCRCF time limit. (Pet. p. 4, ¶ 2.) The Petitioners offer no legal precedent as argument in support of that contention. Moreover, there is nothing in the Transcript of Record (R. pp. 111–160) to support such an assertion.

The Petitioners argue, without citation of authority, that their filing an appeal from the trial court’s Order finding that their Rule 60(b), SCRCF Motion was untimely, *requires* the Supreme Court to review their appeal on the alleged merits of their original Complaint, and not require the Petitioners to abide by the Rules of Civil and Appellate Procedure. The Petitioners write that “... *the Supreme Court now must adjudicate it* [their appeal] *on its merit and substance, not on procedure alone.*” (Emphasis in original.) (Pet. p. 5, ¶ 2.) This argument misstates the appellate rules entirely.

The Petitioners claim, without supporting evidence of any kind, that there was dissent in the decision of the Court of Appeals, a ground set forth in Rule 242(b)(2), SCACR. The Unpublished Opinion of the Court of Appeals, 2015-UP-249, was a *Per Curiam* decision in which all three Judges concurred.

The Petitioners do not cite or claim there is any conflict between the Court of Appeals decision in their case and a prior decision of the Supreme Court, a ground set forth in Rule 242(b)(3), SCACR. Nor do they claim or argue that there are substantial constitutional issues that are directly involved. Rule 242(b)(4), SCACR.

Lastly, the Petitioners do not argue that their case includes a question of federal law, and that the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242(b)(5), SCACR.

The Supreme Court has reiterated on many occasions that they will review Court of Appeals decisions by writ of certiorari only where special reasons justify the exercise of that power.

‘We have held in numerous cases that this Court on writ of *certiorari* will confine its review to the correction of errors of law only, and will not review the findings of fact of an inferior Court or body except when such findings are wholly unsupported by the evidence’

South Carolina Bd. of Exam'rs in Optometry v. Cohen, 256 S.C. 13, 180 S.E.2d 650 (1971).

In the present case, the trial court found as fact that the Petitioners did not file a Rule 60(b), SCRCF Motion within one year of the signing and entry of the Final Order of the trial court issuing that Order. The Petitioners have not shown a scintilla of evidence showing error in that finding.

WHEREFORE, the Respondent respectfully prays that the Supreme Court deny the Petition for Writ of Certiorari, and make such Order as to the costs involved in this matter as the Supreme Court finds lawful and appropriate.

*** *signature page follows* ***

Respectfully submitted,

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August 13, 2015

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PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Return to Petition for Writ of Certiorari and Proof of Service of same in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

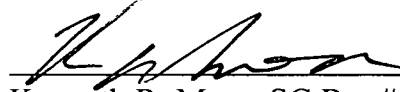
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*** signature page follows ***

Respectfully submitted,

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