

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No. 2009-CP-02-1529

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SEP 08 2015
SC Court of Appeals

William R. Ferrara, Appellant,

v.

Michael E. Hunt, Sheriff of Aiken County and
Charles Cain in his individual capacity as Deputy Sheriff, Defendants,

Of whom Michael E. Hunt is the Respondent.

**RESPONDENTS' RETURN TO
PETITION FOR REHEARING**

On August 12, 2015, this Court issued an unpublished decision affirming the Circuit Court's grant of summary judgment in favor of the Respondent Michael E. Hunt, as Sheriff of Aiken County. The Appellant William R. Ferrara has now filed a petition for rehearing.

Rule 221(b), SCACR, governs the filing of a petition for rehearing. Rule 221(b) requires that "[a] petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." *See*, Rule 221(b), SCACR. The Appellant's petition for rehearing does not satisfy the requirements of Rule 221(b) and should be denied on that basis.

In particular, the Appellant failed to file a supporting memorandum with citation of authorities as is required under Rule 240(c), SCACR. Instead, the Appellant's petition consists of eleven conclusory statements of errors allegedly made by this Court and does not include any substantive discussion of those points. With regard to the majority of the errors asserted by the Appellant, it is impossible to know precisely what the Appellant contends this Court overlooked or misapplied. For example, several of the conclusory points raised by the Appellant state that the "applicable law" was overlooked or misapplied, but there is no specific discussion of how the Court overlooked or misapplied the law and, in fact, there are no citations to statutes or case law that the Appellant even maintains were overlooked or misapplied. Furthermore, several of the other conclusory points assert that this Court overlooked or misconstrued evidence in the record, but there is no specific discussion of what that evidence is.

The conclusory nature of the Appellant's petition for rehearing does not permit this Court or the Respondent to be in a position to address the merits of the Appellant's arguments. By failing to file a supporting memorandum, as is required under Rule 221(b) and Rule 240(c), the Appellant has effectively waived his right to seek a rehearing in this Court.

The South Carolina Supreme Court has explained that "an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 734 S.E.2d 161, 164, n.3 (2012). See also, *R&G Construction, Inc. v. Lowcountry Regional Transportation Auth.*, 343 S.C. 424, 540 S.E.113, 120 (2000) ("[a]n issue is deemed abandoned if the argument in the brief is only conclusory"). In the related context of statement of issues for appeal, the Supreme Court has also cautioned that "broad general statements of issues may be disregarded by this Court." *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900, 903 (2010). Moreover, the Supreme Court reiterated that "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Id.*

In the present case, without the filing of a supporting memorandum, the Court is provided only conclusory statements of alleged errors made by the Court. The petition for rehearing is insufficient in this respect. The Court and the litigants

are left having to "grope in the dark" to determine the particular points intended to be made by the Appellant. The issues for rehearing are presented only in a conclusory manner, and therefore, consistent with well-settled appellate principles, those issues should be deemed abandoned.

Based on the foregoing discussion, the Respondent Michael E. Hunt respectfully requests that this Court deny the petition for rehearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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Counsel for Respondent Michael E. Hunt

Columbia, South Carolina

September 8, 2015

CERTIFICATE OF SERVICE

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SC Court of Appeals

The undersigned employee of Davidson & Lindemann, P.A., counsel for Respondent Michael E. Hunt, does hereby certify that service of the **Respondent's Return to Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 8th day of September 2015:

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September 8, 2015

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SEP 08 2015

SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: William R. Ferrara v. Michael E. Hunt, Sheriff of Aiken County and Charles Cain in his individual capacity as Deputy Sheriff
Appellate Tracing Number: 2013-000826
Civil Action Number: 2009-CP-02-1529
Claim Numbers: 1-0801692-001 & 1-0801693-001
Our File Number: 333.8194

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Respondent's Return to Petition for Rehearing** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
September 8, 2015
Page Two

cc: (w/ Enclosure)

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