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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENWOOD COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Op. No. 2012-UP-081
(S.C. Ct. App. filed February 15, 2012)

William Alvin Hueble, Jr., ... Petitioner,

v.

South Carolina Department of Natural Resources and
Eric Randall Vaughn, ... Defendants,

Of whom, Eric Randall Vaughn is ..... Respondent.

RETURN IN OPPOSITION TO PETITIONER'S MOTION TO ARGUE AGAINST PRECEDENT

The Petitioner William Hueble has filed a one-sentence motion pursuant to Rule 217, SCACR, requesting leave of this Court to argue against the precedent established by the case of *Belton v. State of South Carolina*, 339 S.C. 71, 529

S.E.2d 4 (2000). The Respondent Eric Randall Vaughn opposes that motion for two principal reasons.

First, as indicated, the Petitioner seeks leave of court to argue against precedent in a one-sentence, conclusory motion. No supporting memorandum was filed therewith. This Court has consistently ruled 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"). That same rule of appellate procedure is equally applicable to a motion. That is particularly true in the context of a Rule 217 motion to argue against precedent where Rule 217, in explicit terms, requires the motion to be filed "in accordance with Rule 240." *See*, Rule 217, SCACR. Rule 240(c) requires a motion to be accompanied by a supporting memorandum with citation of authorities. Therefore, by failing to file a supporting memorandum, as is required under Rule 217 and Rule 240(c), the Petitioner has effectively waived his right to seek leave of court to argue against precedent.

Second and even more importantly, the Petitioner asks for leave to argue at oral argument against the precedent established by the *Belton* case despite the fact

that he did not argue in his briefs to this Court that *Belton* was incorrectly decided and/or should be overruled. In *Belton*, this Court explained that an accepted offer of judgment "does not qualify as a 'court award'" under South Carolina law because "there has been no resolution on the merits of the claim." 529 S.E.2d at 5. This Court further explained that an accepted offer of judgment is to be treated as a settlement. This Court expressly held that "[a] case resolved by acceptance of an offer of judgment is considered 'settled.'" 529 S.E.2d at 5, n.4. In his briefs, the Petitioner has argued that this language from *Belton* is inapplicable to the issue raised in the present case. He never argued, however, that *Belton* was wrongly decided and should be overturned as precedent.

It is a well settled principle of appellate procedure that the appellate courts will not "entertain an argument raised for the first time at oral argument." *State ex rel. Carter v. State*, 325 S.C. 204, 481 S.E.2d 429, 430, n.1 (1997). This Court has likewise held that "[i]t is axiomatic that oral argument may not be used as a vehicle to argue issues not argued in the appellate brief." *State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786, 789 (1999). *See also*, *Fossick v. State*, 333 S.C. 66, 508 S.E.2d 32, 33, n.1 (1998) ("Court will not decide issue raised for first time at oral argument"); *Bochette v. Bochette;* 300 S.C. 109, 386 S.E.2d 475, 477 (Ct. App. 1989) ("[a] matter raised for the first time in oral argument ... will not be considered by the appellate court"); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d

859, 862, n.1 (Ct. App. 1993) ("an appellant may not use oral argument as a vehicle to argue new matters").

By seeking leave to argue in any respect that *Belton* was decided incorrectly by this Court in 2000, and should thus be overruled in whole or in part, the Petitioner would be raising a new issue that was not argued in its appellate briefs. He should not be permitted to offer new arguments at oral argument that have not previously been briefed.

For these reasons, the Court is respectfully requested to deny the Petitioner's Rule 217 motion.

Respectfully submitted,

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September 14, 2015

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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent Eric Randall Vaughn, does hereby certify that service of the **Return in Opposition to Petitioner's Motion to Argue Against Precedent** 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 14th day of September 2015:

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