THE STATE OF SOUTH CAROLINA

In THE SUPREME COURT OF SOUTH CAROLINA

Glenda Couram, Appellant,

v

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, in their official and individual capacities, and the South Carolina Department of Motor Vehicles, Respondents.

Appellate Case No. 2012-213441
Lower Court Case No. 2011-CP-40-01734

RECEIVED

FEB 23 2016

S.C. SUPREME COURT

MOTION TO RECALL REMITTITUR
SCRCP 221/242

To the Honorable Chief Justice Costa M. Pleicones and the Justices of the South Carolina Supreme Court:

Appellant/petitioner, pro se, Glenda Couram, respectfully moves this court for an Order *RECALLING THE REMITTITUR* sent to the lower court on February 17, 2016 and permit her to exercise the right or opportunity to file a Motion to Rehear En Banc in response to the denial of her petition for a Writ of Certiorari submitted to this court after a final decision of the SC Court of Appeals dated February 4, 2014.

The pro learned of the denial as stated via e-mail on February 17, 2016 via e-mail from the Attorney she hired to write the Petition to this court. The suddenness of this ruling is surprising because the February Advance Sheets show the Petition as ***still pending*** (see attached) Wednesday, February 17, 2016.

The pro se called the court and was told she could file a Motion for Rehearing so she contacted the attorney to inform him of her intent to file request for rehearing and later she

informed him she was going file to the United States Supreme Court and on that same date February 17, 2016 the Clerk apparently sent the *REMITTITUR* via mail directly to the pro se and in doing so the pro se is apparently prevented from filing a Motion to Rehear En Banc to this court.

However, as stated to be in procedural compliance with the United States Supreme Court the pro se is filing a Motion to Rehear which is attached pursuant to the following allowance of a rehearing by the Supreme Court of South Carolina if they do not apply to this matter the pro se apologies. Pro se also ask that the court remember she is pro se and has been severely damaged constitutionally by the defendants in this matter and her last resort is the US Supreme Court.

Pro se located three instances where attorneys were allowed to file Motions to Rehear:

> 1). South Carolina Supreme Court Ruling Op. 27120 Anderson v SC Election Commission "Finally, while a petition for rehearing is normally due within fifteen days after the filing of an opinion under Rule 221(a), SCACR, because of the urgency of this matter, any petition for rehearing must be received by this Court by 10:00 a.m. on May 3, 2012." JUDGMENT FOR PLAINTIFFS, PLEICONES, ACTING CHIEF JUSTICE, BEATTY, KITTREDGE, HEARN, JJ., and Acting
>
> 2) SC Supreme Court denies rehearing of Cunningham v Anderson County – wrongful discharge case December 9, 2015.
>
> 3) SC Supreme Court denies rehearing of case of couple adopting Cherokee nation/heritage child – dated July 2013.

Pursuant to Rule 242 its states that a Court of Appeals decision is not final until a petition for rehearing and responded to by the Appeals Court and procedurally required in order to file a petition to the SC Supreme Court and therefore this appears to hold true for filing to the US Supreme Court so it is imperative to be in procedural compliance as the court knows. The Order from this court merely state "based on a vote by the Court, the petition for a writ of certiorari is

denied" there is no reason listed. Pro se also make this request because she is unsure if a reason is needed for the US Supreme Court. [1]

In conclusion, this pro se petitioner respectfully ask this court to order the *recalling of the remittitur* that was prematurely submitted by the Clerk on February 17, 2016, well before the passing of 10 or even 15 days. To allow this court to assure and address whether or not the pro se rights have not been violated and give her an opportunity allowed to others to determine if material misapprehensions of fact, material questions of law and to ensure public policy have not been violated or overlooked such as subject matter and personal jurisdictio'n.

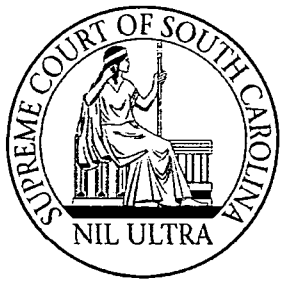
The pro se also request that the *remittitur* be recalled so she can have a rehearing en banc ruled upon permitting completion of procedural requirement for filing to the US Supreme Court.

Dated this 21st day of February 2016

Respectfully submitted by,

Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073
grcouram@hotmail.com
803 358-0127

[1] Also upon reach the pro se notes that sister Supreme courts allow for optional rehearing to the its rulings as well as the US Supreme Court Rule 44(1)(2) et seq



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 7
February 17, 2016
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

2014-UP-470-State v. Jon Wynn Jarrard, Sr.	Pending
2015-UP-010-Latonya Footman v. Johnson Food Services	Pending
2015-UP-031-Blue Ridge Electric v. Kathleen Gresham	Pending
2015-UP-041-Nathalie Davaut v. USC	Pending
2015-UP-065-Glenda Couram v. Lula Davis	Pending
2015-UP-069-Amie Gitter v. Morris Gitter	Pending
2015-UP-091-U.S. Bank v. Kelley Burr	Pending
2015-UP-167-Cynthia Griffis v. Cherry Hill Estates	Pending
2015-UP-174-Tommy S. Adams v. State	Pending
2015-UP-176-Charles Ray Dean v. State	Pending
2015-UP-201-James W. Trexler v. The Associated Press	Pending
2015-UP-203-The Callawassie Island v. Arthur Applegate	Pending
2015-UP-208-Bank of New York Mellon v. Rachel R. Lindsay	Pending
2015-UP-209-Elizabeth Hope Rainey v. Charlotte-Mecklenburg	Pending
2015-UP-215-Ex Parte Tara Dawn Shurling (In re: State v.Harley)	Pending
2015-UP-235-Billy Lisenby v. S.C. Dept. of Corrections	Denied 02/11/16
2015-UP-248-South Carolina Electric & Gas v. Anson	Pending
2015-UP-256-State v. John F. Kennedy	Pending
2015-UP-259-Danny Abrams v. City of Newberry	Pending
2015-UP-262-State v. Erick Arroyo	Pending
2015-UP-266-State v. Gary Eugene Lott	Pending

26805 - Herron v. Century BMW

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease and Michael Watts, Individually and for the Benefit of All Car Buyers Whom Paid "Administrative Fees" as Described below to Defendants Respondents,

v.

Century BMW a/k/a Sonic Automotive, Dick Dyer & Associates, Inc., Galeana Chrysler Plymouth, Inc., a/k/a Galeana Chrysler Jeep, Inc., J.L.H. Investments LP, a/k/a Hendrick Honda, Overland, Inc., d/b/a Land Rover of Columbia, Taylor Toyota, a/k/a Taylor Investments, and Toyota of Greenville, Inc., et. al. Defendants
of whom Century BMW a/k/a Sonic Automotive is the Appellant.

On Remand from the United States Supreme Court

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 26805
Reheard November 1, 2011 –
Refiled December 19, 2011

ORIGINAL OPINION REINSTATED

Dennis M. Black, and Ryan L. VanGrack, of Williams & Connolly, of Washington, Steven W. Hamm and C. Jo Anne Wessinger-Hill, of Richardson, Plowden & Robinson, of Columbia, for Appellant.

A. Camden Lewis and Ariail E. King, of Columbia, Richard A. Harpootlian, of Columbia, Edwin Grey Wicker and Michael E. Spears, both of Spartanburg, and Gedney M. Howe, III, of Charleston, for Respondents.

JUSTICE KITTREDGE: This case returns to us on remand from the United States Supreme Court to reconsider our opinion in Herron v. Century BMW[1] in light of its decision in AT&T Mobility, LLC v. Concepcion.[2] Because the issue of preemption was not preserved for review in the South Carolina proceedings, we reinstate our initial opinion.

I.

The underlying action originally came before this Court on appeal of the trial court's denial of Appellant Century BMW's motion to compel arbitration. We affirmed in result the trial court's denial of the motion to compel.[3]

Following our decision, Appellant filed a petition for rehearing, contending this Court's opinion was "inconsistent with the United States Supreme Court's recent decision in Stolt-Nielsen S.A. v. Animalfeeds International Corp."[4] Appellant stated that pursuant to Stolt-Nielsen, "[t]he [Federal Arbitration Act] clearly preempts South Carolina law, as this Court construed it" and "[i]f a party cannot be compelled to class arbitration absent an agreement to arbitrate as a class, a fortiori the FAA preempts any public policy requiring class arbitration even where the parties agreed not to arbitrate as a class." In our order denying rehearing, we emphasized that our opinion was "wholly based on state law grounds, namely a provision in a contract banning class action suits is invalid pursuant to the Dealers Act[5] and the public policy of this State." We further admonished Appellant for attempting to reframe the issues and miscast our holding as "disingenuous to the opinion and a holding we never made."

Thereafter, Appellant petitioned the United States Supreme Court for a writ of certiorari. Although the issue was not raised to the trial court or this Court, Appellant presented the following question in its certiorari petition:

Whether the Federal Arbitration Act preempts a state law invalidating a prohibition on class arbitration contained in an arbitration agreement. This Court's opinion was vacated by the United States Supreme Court and remanded for

consideration in light of its decision in AT&T Mobility, LLC v. Concepcion. Respondents argue that the matter of preemption was not preserved in the South Carolina proceedings. We agree and therefore adhere to our initial opinion.

II.

A.

Appellant contends that the issue of whether the FAA preempted state law, which it raised to the United States Supreme Court, was sufficiently preserved in the state court proceedings because Appellant referenced the state and federal policies favoring arbitration in its filings.[6] We disagree.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is "axiomatic that an issue cannot be raised for the first time on appeal." Id. Imposing such a requirement on the appellant "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal. Glover v. County of Charleston, 361 S.C. 634, 606 S.E.2d 773 (2004) *overruled on other grounds by* Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005); see also Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995) (holding that a due process claim raised for the first time on appeal was not preserved); Merriman v. Minter, 298 S.C. 110, 378 S.E.2d 441 (1989) (refusing to consider an equal protection challenge to a statute on appeal where it was not raised to the trial court).

Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue. See State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict). Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733; see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) (finding that although SCDOT did not phrase objection in the exact terms used in the issues on appeal, the objection was sufficiently specific to allow the trial court to rule on the issue).

Our appellate rules also offer guidance. "Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR. When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is *reasonably clear* from an appellant's arguments. See Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001) (finding the statement of issue, when read in conjunction with the argument, sufficiently raised the issue to the court). However, "[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." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (internal citation omitted). Similarly, a petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564

S.E.2d 322, 322 (2001) (quoting Jean H. Toal, *Appellate Practice in South Carolina* 309 (1999)).

B.

South Carolina is not alone in its issue preservation requirements. The United States Supreme Court has "consistently refused to decide federal constitutional issues raised [to it] for the first time on review of state court decisions." Cardindale v. Lousiana, 394 U.S. 437, 438 (1969); see also Webb v. Webb, 451 U.S. 493 (1981) (holding where the Georgia Supreme Court failed to rule on federal issue, the United States Supreme Court was without jurisdiction in the case); Hill v. California, 401 U.S. 797 (1971) (refusing to reach a Fifth Amendment question when the issue was not raised, briefed, or argued at any level of state court).[7]

Moreover, the Supreme Court has stated "[w]hen the highest state court is silent on a federal question before us, we assume that the issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption by demonstrating that the state court had a fair opportunity to address the federal question that is sought to be presented here." Adams v. Robertson, 520 U.S. 83, 86-87 (1997) (internal citations omitted).[8] The Supreme Court has explained its reasoning for such policies:

[I]n a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds, they should be given the first opportunity to consider them. Cardindale, 394 U.S. at 439.

C.

We have carefully re-examined the record. In all of the submissions, memoranda, and hearings before the trial court, not once was there a single mention of federal preemption as it relates to the issue before us. Certainly, Appellant cites to both the federal and state policy favoring arbitration, and no party or court has ever disputed the obvious—both the federal and state policies do favor arbitration. However, a general acknowledgment of a policy favoring arbitration is a far cry from a specifically articulated preemption argument.[9]

Tellingly, the trial court's order denying Appellant's motion to compel states "[t]he Plaintiff and Defendant agree that Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (2007)[10] is the *controlling authority* of this motion." (emphasis added). In our opinion, this opening sentence to the legal analysis section of the trial court's order demonstrates Appellant and Respondents' mutual agreement that the case was to be decided by reference to state law. That finding was never challenged until the petition for rehearing.

Moreover, it is clear preemption was neither a novel nor an unknown argument to Appellant. Significantly, Appellant did raise the issue of preemption to the trial court, albeit in a different context. Respondents initially challenged the arbitration agreement on the basis that it lacked certain formatting requirements under the South Carolina Arbitration Act. However, Appellant successfully defeated that state law challenge based on preemption, specifically arguing that the FAA preempted state law due to the presence of interstate commerce. The voluminous record is otherwise silent as to *any* claim of preemption, until the petition for rehearing filed with this Court.

Simply stated, the question Appellant presented to the United States Supreme Court, namely whether the FAA preempted our state's legislative policy as set forth in the Dealers Act, was raised neither to the trial court nor to our Court. And although the issue of preemption was raised in Appellant's rehearing petition, such an attempt was untimely and improper as a party may not raise an issue for the first time in a petition for rehearing. See Kennedy, 349 S.C. at 532, 564 S.E.2d at 322 ("The purpose of a

petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.").

Unquestionably, our opinion in Herron did not address federal preemption. Rather, it quite naturally resolved the matter solely on the basis of state law, just as the parties presented it to us. See State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked."). However, the absence of a preemption discussion is not attributable to this Court's failure to recognize or understand the arguments presented.

Rather, Appellants failed to present the issue to us, as evidenced by our detailed order denying Appellant's petition for rehearing which rejected Appellant's attempt to recast the issues that were presented to us.

We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.

Yet, because Appellant can point to no instance where preemption was properly raised or ruled upon, to disregard our issue preservation rules under these circumstances would render them meaningless. As this Court observed, issue preservation rules "prevent[] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." I'On, 338 S.C. at 406, 526 S.E.2d at 724. Here, intentionally or by chance, Appellant kept the ace card of preemption up its sleeve until after this Court filed its opinion. Under even the most liberal approach to issue preservation principles, we could not treat Appellant's preemption argument as preserved in our courts as a matter of state law.

Because the matter of preemption was not raised to and ruled upon in any of the South Carolina proceedings, we find the issue of preemption is procedurally barred as matter of state law and further consideration in light of AT&T Mobility, LLC v. Concepcion is unwarranted. We reinstate our original opinion and decline to revisit it.

ORIGINAL OPINION REINSTATED.
TOAL, C.J., BEATTY, HEARN, JJ., and Acting Justice James E. Moore, concur.

[1] 387 S.C. 525, 693 S.E.2d 394 (2010).
[2] 131 S.Ct. 1740 (2011).
[3] A detailed summary of the underlying facts and the Court's reasoning for that decision can be found in our original opinion.
[4] 130 S.Ct. 1758 (2010).
[5] The full title of the Act is the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, S.C. Code Ann. § 56-15-10 *et seq.* (2007).
[6] At oral argument on rehearing, counsel for Appellant went beyond its brief and claimed it had made the argument to the effect that "federal law controls," and that such argument was sufficient to preserve the preemption argument. We would agree that the argument was preserved if Appellant had ever made that argument in any manner related to the issue of preemption, but it did not. Just as the word "preemption" appears nowhere in the briefs filed with this Court, neither does the argument that the "federal law controls." In short, Appellant presented no argument (prior to its rehearing petition) that could reasonably be construed to embrace the matter of preemption.[7]

Appellant contends that because the United States Supreme Court granted certiorari, Respondents are precluded from arguing that the preemption issue is not preserved. We disagree. The Supreme Court has previously granted certiorari based on assertions in petitions and later refused to rule on the issue because it realized the issue was never raised to the state court. See Cardindale, 394 U.S. at 438 (stating that "[a]lthough certiorari was granted to consider this question, the fact emerged in oral argument that the sole federal question argued here had never been raised, preserved, or passed

upon in the state courts below"); see also Webb, 451 U.S. at 494-95 (stating that because the Court disfavors the filing of the state court record, "[the Court] [is] largely dependent on assertions made by the parties as to what that record will demonstrate concerning the manner in which a federal question was raised below").

[8] The Rules of the Supreme Court also require a party to demonstrate the state court addressed the issue presented to it. Rule 14 states in relevant part:

If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e. g.*:, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. Sup. Ct. R. 14(1)(g)(i).

[9] We also note that Appellant cites a provision of the FAA, 9 U.S.C. § 2 (2006), in its trial court motions for the proposition that the FAA applies to the arbitration agreement at hand. Both the trial court and this Court agreed with Appellant. Yet Appellant never cited section 2 of the FAA in any fashion that can be construed as anything akin to the preemption argument it presented to the United States Supreme Court.

[10] In Simpson, this Court denied a motion to compel arbitration, finding an arbitration clause in a vehicle trade-in contract was unconscionable and, therefore, unenforceable due to a multitude of one-sided terms. Notably, the Simpson decision, however, in no way dealt with federal preemption. The word "preemption" appears in the Simpson opinion, only to note that preemption was not involved.

THE STATE OF SOUTH CAROLINA

In THE SUPREME COURT OF SOUTH CAROLINA

Glenda Couram, Appellant,

v

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, in their official and individual capacities, and the South Carolina Department of Motor Vehicles, Respondents.

Appellate Case No. 2012-213441
Lower Court Case No. 2011-CP-40-01734

APPELLANT/PETITIONER REQUEST FOR REHEARING EN BANC OF WRIT OF CERTIORARI

Petitioner, Glenda Couram, pro se, file this Motion for Rehearing En Banc for the following reasons:

I. DID THE RICHLAND COUNTY CIRCUIT OR THE COURT OF APPEALS HAVE SUBJECT MATTER OR PERSONAL JURISDICTION TO THE HEAR THIS MATTER?

Pro se makes this request because the attorney who wrote the writ neglected to place this question before this court, even after the pro se requested he do so several times and because **"Subject-matter jurisdiction, because it involves the court's power to hear a case, can never be forfeited or waived."** ***United States*** **v.** ***Cotton,*** **535 U. S. 625, 630.**

The only claims remanded from the federal court on August 20, 2012 and set for trial on November 6, 2012, were state pendant common law claims of civil conspiracy, outrage/IIED, gross negligence, defamation, etc., pursuant to SC common law three year statute of limitations pursuant to §15-3-545; S.C. Code Ann. § 15-3-530 and filed within the original statute of

limitations obtained when this pro se filed a verified claims on January 4, 2010 and date of injury November 13, 2008 as document in the official records thru the EEOC pursuant to S.C. Code of Laws Section 15-78-60 et seq., See Jinks v. Richland County, 538 U.S. 456, 462-63, 123 S.Ct. 1667, 155 L.Ed.2d 631 (2003); SC Supreme Court Jinks v Richland County, No, 25690 (2003)fnt. The original statute of limitations did not expire until November 13, 2011. Pro se filed her pleading on or about October 22, 2011 well within the statute of limitations.

There were no questions before the circuit court upon remand that related to discrimination based on federal law Title VII of the Civil Rights Act of 1964 (Title VII) if there had been the matter would not have been remanded back to state court because the federal court would have had jurisdiction.

When the defendants filed the Motion to Dismiss on October 29, 2012 they created a whole new pleading including new cause of injury - failure to promote - new injury dates December 8, 2008, they changed the pro se's complaint to one that had not been filed before the EEOC or SCHAC and dispensed with every legal ruling that took place since January 4, 2010 in violation of SCRCP Rule 11.

There was no exhaustion of administrative remedies the federal law states "A plaintiff must exhaust administrative remedies by filing a charge with the EEOC before pursuing a suit in federal court. Among other things, requiring a party to file a charge with the EEOC "ensures that the employer is put on notice of the alleged violations" and given "a chance to address the alleged discrimination prior to litigation." *Milles v. Dell, Inc.*, 429 F.3d 480, 491 (4th Cir. 2005); *EEOC v. United Road Towing, Inc.* docket number 10 C 6259, May 11, 2012.

See Sydnor v. Fairfax Cnty., Va., 681 F.3d 591, 593 (4th Cir. 2012) (noting that the ADA requires that a plaintiff must exhaust his administrative remedies by filing a charge with the

EEOC before pursuing a suit in federal court); *Jones v. Calvert Grp., Ltd.*, 551 F.3d 297, 300 (4th Cir. 2009) ("Before a plaintiff may file suit under Title VII or the ADEA, he is required to file a charge of discrimination with the EEOC.") or with the SC Human Affairs Commission who will duel fill with the EEOC or vise versa .

The exhaustion requirement is integral to the enforcement scheme for the federal discrimination statutes. *Sydnor,* 681 F.3d. at 593 (citing *Chacko v. Patuxent Inst.*, 429 F.3d 505, 510 (4th Cir. 2005)). Requiring a party to first file a charge with the EEOC ensures that the employer is given notice of the alleged claims, allowing the employer a chance to remedy discrimination before litigation commences, and provides the parties recourse to resolution in a more efficient and less formal manner. *Sydnor,* 681 F.3d. at 593. Failure to exhaust administrative remedies deprives a .... court of subject-matter jurisdiction over the claim. See Jones, 551 F.3d at 300.

Therefore, there is a question of jurisdiction that needs to be answered and if the pro se understands correctly the rules state that this question can be brought up at any time even in a Motion to Rehear. Note: Pro se did bring this question up in the Motion to Rehear En Banc with the SC Court of Appeals but they denied the Motion to Rehear pro se also believes that the question was in the Appeal.

Also when the state courts ruled on this matter they stepped in the domain of the Federal Court.

II. DID THE SC COURT OF APPEALS AND THE CIRCUIT COURT COMPLY WITH WELL ESTABLISHED LAW IN GRANTING THE DEFENDANTS 12(b) MOTION TO DISMISS?

The pro se also asked the attorney to question the Standard of Review in granting a 12(b) Motion to Dismiss again he did not comply.

Both the SC Court of Appeals and the Richland County Circuit Court were in direct conflict with State of South Carolina Supreme Court, all sister courts and the US Supreme Court when granting the Defendants' Motion to Dismiss.

In fact the trial court did not even acknowledge the pro se had a pleading before it. The pleading was filed and placed on record on or about September 9, 2012, shortly after the Remand from Federal Court August 20, 2012.

Both the Circuit Court and the Court of Appeals made its ruling purely on the Motion to Dismiss filed on October 29, 2012, days away from the trial that was scheduled for November 6, 2012. The Motion was heard on November 5, 2012 with the pro se only having 2 days notice November 2, 2012.

In granting a 12(b) Motion to dismiss this court in Wilkinson v East Cooper Community Hospital, etc., stated "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the *pleadings* would entitle the plaintiff to relief on any theory of the case." *Id.* (internal quotations omitted). Four corners of the pleading.

This matter is similar to this court's ruling in Baird v Charleston County, Op. No. 24885, dated January 18, 1999.

III. DID THE COURT OF APPEALS PROPERLY APPLY THIS COURT'S RULING IN *I'ON, L.L.C. V. TOWN OF MT. PLEASANT*, 338 S.C. 406, 419, 526 S.E.2D 716, 723 (2000)

The Court hears Cases when Lower Courts Disregard past Supreme Court decisions: If a lower court blatantly disregards a past Supreme Court decision, the court may hear the case to correct the lower court, or alternatively, simply overrule the case without comment.

The SC Supreme Court ruling states ("Under the present rules, a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review.").

The key is that the defendants had to have been the "winner" they were not in the matter that was before the Circuit Court and the Court of Appeals. If there was a prevailing party it was the pro se as her state pendant claims were remanded back to the state court. Doesn't that mean the Defendants lost?

There was no hearing or trial only an Order of remand therefore there could not have been any winners on the merits of the case. Therefore, the court of appeals misapplied, misstated or misunderstood this Court's ruling in *I'on.* See Ann Dreher v SC Department of Health and Environmental Control, No. 2013-000364, Op 27507 filed March 2015.

The defendants did not appeal the Orders of Judge Perry or Judge Seymour evoking the Law of the Case Doctrine which states pursuant to SC Supreme Court ruling in Ann Dreher v SC Department of Health and Environmental Control - "An unappealed ruling is the law of the case and requires affirmance." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). Thus, should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case. *Cf. Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating . . . , [*inter alia,*] matters that were [] not raised on appeal, but should have been . . . .").

IV. PROCEDURAL REQUIREMENTS

This court has allowed rehearing pursuant to SCRCP 221 and this rule says that if a ruling ends a case such a request is appropriate.

1. IN RE: Cynthia E. COLLIE, Respondent; Case No. 2012–213164. October 17, 2013 (Petition for Rehearing)

2. Michael Cunningham v Anderson County, Opinion No. 27568 Denied Petition for Rehearing Employment Case

3. Herron v Century BMW, Case No. 26805- Case filed to US Supreme Court after filing Request for Rehearing Case enclosed

4. Wilkinson v East Cooper Community Hospital – Motion to Rehear filed. October 2014 Case No. 2012-213464

In order for this pro se to file a writ petition to the United States Supreme Court she must file a Motion to Rehear to the lower court which would the State of South Carolina Supreme Court and to meet the procedural requirement to file to the US Supreme Court[1] this pro se request a Rehearing of the Denial of her writ dated February 12, 2016.[2]

Also the rehearing is necessary to assure the US Supreme Court that this ruling is the final judgment on this matter.

In conclusion, this pro se seeks this Court's rehearing of this matter because of its mandates that to go before this court the matter must be of exceptional importance. This matter is of exceptional importance. The lower courts' denial of rights to a population of citizen of this State of South Carolina and their seemingly lack of concern that this group will ever be before any superior court speaks volumes of the necessity that this court take up this matter.

South Carolina courts appears to be the only court that has no standards for dealing with pro se litigants to ensure they receive the same protection as those who have attorneys that is

[1] Pro se understand it is the same process as she completed to gain access to this honorable court.
[2] The Advance Sheet of this court does not indicate that pro se writ had been denied (see attached)

what makes this matter of *exceptional importance* for this court to allow a rehearing in this matter.

Thus this petitioner respectfully ask that this court rehear this matter to ensure substantial justice is done in this matter and or to provide the ruling and institute procedures necessary to allow this pro se to file this matter to the US Supreme Court and allow other pro se litigants access to the superior courts putting the lower courts on notice.[3]

Respectfully submitted by,

Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073
grcouram@hotmail.com
803 358-0127

Dated this 21st day of February 2016
Lexington South Carolina

[3] Note: Pro se take this moment to apologize to the Court of Appeals for the tone of her Motion to Rehear there running was such a shock and just so left field and she also ask this court to excuse any typos or grammatical mistakes and apply the pro se standard.

THE STATE OF SOUTH CAROLINA
In THE SUPREME COURT OF SOUTH CAROLINA

Glenda Couram, Appellant,

v

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake, in their official and individual capacities, and the South Carolina Department of Motor Vehicles, Respondents.

Appellate Case No. 2012-213441
Lower Court Case No. 2011-CP-40-01734

CERTIFICATE OF SERVICE

I Glenda Couram, pro se, certify on this date February 21, 2016, have served a copy of the *Motion to Recall Remittitur and Motion to Rehear /Reconsider En Banc* on the Clerk of Court of the South Carolina Supreme Court, Clerk of Court of The SC Court of Appeals and Richland County Clerk of Court,, Attorneys Matthews, Goodwyn and Peavy as listed below by depositing in the US Postal Service Mail in an envelope with sufficient postage as addressed as follows on this 21st day of February 2016.

Eugene H. Matthews, Esq.
Richardson Plowden
1900 Barnwell Street
Columbia, SC 29201

Thomas J. Goodwyn, Jr., Esq
Rachel Gottlieb Peavy, Esq.
Attorneys at Law
2519 Devine Street, Ste A
Columbia, SC 29205-2435

Ms. Jeanette W. McBride
Clerk of Court
Richland County Circuit Court
2020 Hampton Street
Columbia, SC 29202-2766

Ms. Jenny A. Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201-1629

Respectfully submitted by,

Glenda R. Couram
104 Macaw Lane
Lexington, SC 29073
grcouram@hotmail.com
803 358-0127