**THE STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS
THE HONORABLE STEVEN H. JOHN
CIRCUIT COURT JUDGE



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APPELLATE CASE NO. 2017-001364
CIVIL ACTION NO. 2015-CP-22-00483

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Willie Singleton,

**APPELLANT,**

versus

City of Georgetown; Janet Grant, Individually and as an employee of the City; Ricky Martin, individually and as an employee of the City; Robert O'Donnell, Individually and as Magistrate for the City of Georgetown,

**RESPONDENTS.**

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# FINAL RESPONDENTS' BRIEF

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## TABLE OF CONTENTS

**PAGE**

## TABLE OF AUTHORITIES

**CASES** **PAGE**

**STATUTES**



**OTHER AUTHORITIES**



**RULES**

## COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Appellant cannot revive on appeal his claims for wrongful taking, condemnation, due process, and equal protection for which (1) the federal district court previously granted summary judgment in Respondents' favor; and (2) Appellant conceded before the circuit court were no longer pending claims in the case.

II. The Trial Court properly granted summary judgment to Respondents on Appellant's sole remaining claim of gross negligence because Respondents are immune from liability pursuant to the exceptions to the waiver of governmental immunity under the South Carolina Tort Claims Act.

III. The doctrine of *res judicata* bars Appellant's gross negligence claim against Respondents because the issues raised by the gross negligence claim could have been litigated in the previous municipal court proceedings relating to Appellant's conviction for maintaining a public nuisance.

IV. As an additional sustaining ground, Appellant's gross negligence claim is barred by the two-year statute of limitations set forth under the South Carolina Tort Claims Act.

## COUNTERSTATEMENT OF THE CASE

This case arises out of a summons issued to Appellant Willie Singleton by the City of Georgetown, South Carolina (the "City") for an "excessive overgrown lot with a dilapidated structure" in violation of the City's Municipal Code, Article II, Public Health Nuisances, § 11-26. On July 13, 2011, Appellant was found guilty of violating § 11-26 after a municipal trial and fined $1,092.50, consisting of a $500.00 fine and the remainder in court fees. Singleton's conviction was affirmed on appeal.

Singleton thereafter continued to litigate the City's issuance of the summons. On May 14, 2015, Singleton filed a Complaint in the Court of Common Pleas for Georgetown County against the City, Janet Grant, Ricky Martin, and Robert O'Donnell (collectively, the "Respondents"). [R.pp. 45-60; Compl.] Singleton asserted eight different causes of action: (1) wrongful taking; (2) deprivation of substantive and procedural due process based on Respondents' alleged failure to give Singleton notice and an opportunity to be heard; (3) failure of Respondents to follow prescribed statutory procedures governing condemnation of dilapidated properties; (4) violation of 42 U.S.C. § 1983; (5) conversion of Singleton's property without proper compensation; (6) violation of the Administrative Procedures Act by wrongfully condemning and ordering the removal of the building from Singleton's property; (7) alleged negligence of Respondents in failing to follow proper procedures; and (8) violation of Singleton's equal protection rights. [R.pp. 52-59; Compl., pp. 7-14.]

Respondents removed the case to the United States District Court for South Carolina on July 26, 2015 based upon Singleton's § 1983 claim and alleged violations of

Singleton's constitutional rights. [R.pp. 168; Dist. Ct. Order, p. 4.] Respondents filed a motion for summary judgment with the District Court on June 1, 2016. [R.p. 4 ; Id.]

On February 13, 2017, the District Court grant Respondents' motion for summary judgment as to Singleton's § 1983 claim and equal protection, procedural due process, and substantive due process claims. [R.pp. 174-184; Id. at pp. 10-20.] The District Court noted in its order that Singleton had conceded there was no viable takings claim and further conceded that there had been no condemnation of the structure on the property at issue. [R.p. 168; Id. at p. 4, nn. 3-4.] Although noting that it was difficult to discern if Singleton had alleged any state law causes of action in the Complaint, the District Court remanded any remaining state law claims to the Court of Common Pleas for Georgetown County. [R.pp. 182-184; Id. at pp. 18-20, 18, n. 7.]

On May 16, 2017, Respondents moved for summary judgment before the Court of Common Pleas in Georgetown County on any remaining state law claims on the basis of immunity under the South Carolina Tort Claims Act, the expiration of the applicable statute of limitations, and *res judicata.* [R.pp. 1-9; Memo in Support of Mtn. for Summary Judgment.]

A hearing on Respondents' motion for summary judgment was held on June 1, 2017 before the Honorable Steven H. John. [R.pp. 109-122; Hearing Tr.] At the summary judgment hearing, Singleton acknowledged the only remaining cause of action against Respondents was a gross negligence claim relating to Respondents' alleged failure to notify Singleton of the trial date for the summons issued to Singleton for violating Section 11-26 of the City's Municipal Code. [R.pp. 118, ll. 17-21; 119, ll. 20-21; Id. at pp. 10, ll. 17-21; 11, ll. 20-21.]

At the conclusion of the hearing, the Trial Court orally granted summary judgment to Respondents on the grounds that Respondents were immune under the Tort Claims Act and that any gross negligence claim was barred by the doctrine of *res judicata*. [R.pp. 120, l. 22 – 121, l. 13; Id. at pp. 12, l. 22 – 13, l. 13.] The Trial Court's ruling was memorialized in a written order filed June 9, 2017. [R.pp. 123-126; Order.]

Singleton filed and served his Notice of Appeal on or about June 15, 2017.

## COUNTERSTATEMENT OF FACTS

Singleton owns a piece of property, Tax Parcel No. 5-22-26, in the City of Georgetown, South Carolina (the "Lot").[1] The Lot was overgrown, and Respondent Grant, a code enforcement officer for the City, began sending Singleton a series of letters regarding the overgrowth on the Lot in violation of Section 11-26 of the City of Georgetown Municipal Code, Article II regarding Public Health Nuisances. [R.p. 147, ll. 9-25; Grant Dep., p. 48, ll. 9-25.] The relevant text of Section 11-26 identifies a public nuisance as:

> (3) Any building or part of any building which, on account of its condition, its occupancy or use, may endanger life or health; . . .
>
> (7) Any property, whether occupied or vacant, upon which, grass,

[1] In his brief, Singleton describes how he came to own this Lot and insinuates that Respondent O'Donnell may have made certain errors with respect to the various transactions leading to Singleton's ownership of the Lot. Singleton, however, does not allege any cause of action in his Complaint relating to any alleged legal malpractice by O'Donnell, which in any event would have been barred by the three-year statute of limitations since the last act of O'Donnell's which Singleton complains of with respect to the property transactions occurred in 2003. See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 525, 787 S.E.2d 485, 489 (2016) ("The statute of limitations for a legal malpractice action is three years."). Instead, Singleton implies that he was singled out for prosecution by the City because of his knowledge of O'Donnell's role in the property transactions but as explained in this brief, the United States District Court for South Carolina has already granted summary judgment on Singleton's selective enforcement and equal protection claims.

> weeds or undergrowth exceeding eighteen (18) inches in height, trash, garbage, offal, stagnant water, building materials, glass, wood, metal or other matter deleterious to good health and public sanitation is permitted or caused to accumulate in any manner which is or may become a nuisance causing injuries or sickness to the public or neighboring property;
>
> (8) Any property which, because of its condition, may promote the breeding or harborage of flies, rats, snakes, vermin or other insects and animals.

§ 11-26.

On July 28, 2010, Grant sent a letter to Singleton advising that the Lot was overgrown in violation of the City's public nuisance ordinance and the grass needed to be cut from the front property line to the rear property line. [R.p. 246; July 28, 2010 Ltr.] The letter further advised that the Lot needed to be cleaned of all debris and litter and cut by August 20, 2010. [R.p. 246; Id.] Singleton acknowledged receiving this letter, but he informed the City that he did not intend to clear the Lot. [R.pp. 75, l. 1 – 76, l. 4; Singleton Dep., pp. 26, l. 1 – 27, l. 4.]

On September 16, 2010, Grant sent Singleton an additional letter regarding "excessive overgrowth on property (rear, side and front area) and a dilapidated structure." [R.p. 247; September 16, 2010 Ltr.] Grant extended Singleton's deadline to remedy the property condition to October 16, 2010. [R.p. 247; Id.]

Accompanying Grant's letter was Uniform Ordinance Summons No. 1295. [R.p. 248; Summons.] The Summons identified a violation of Article II of Public Health Nuisances Section 11-26 by way of "excessive overgrown lot with dilapidated structure." The bond amount issued was $1,092.50, which reflected a fine of $500.00 and court fees. The Summons set a trial date of October 21, 2010. [R.p. 248; Id.] Grant testified that Singleton had an opportunity to clean the Lot before trial and, if he had done so, she

would have dropped the summons. [R.pp. 147, l. 1 – 148, l. 5; Grant Dep., pp. 48, l. 1 – 49, l. 5.] Singleton acknowledged being aware of Grant's September 16, 2010 letter and the summons. [R.pp. 78, l. 2 – 79, l. 10; Singleton Dep., pp. 29, l. 2 – 30, l. 10.]

Singleton appeared at the municipal court hearing and requested a jury trial. [R.p. 80, ll. 7-14; Id. at p. 31, ll. 7-14.] The case was continued to accommodate his request. The trial was subsequently set for January 10, 2011 and then set again for April 4, 2011. [R.pp. 80, ll. 24-25; 81, ll. 1-18; Id. at pp. 31, ll. 24-25; 33, ll. 1 – 18.] At some point, Singleton filed a complaint with the South Carolina Department of Labor, Licensing and Regulation ("LLR") against Grant. Singleton requested his trial be continued until the resolution of his LLR complaint. [R.pp. 81, l. 14 – 82, l. 7; Id. at pp. 33, l. 14 – 34, l. 7.] Singleton's LLR complaint against Grant was determined by LLR to be unfounded. [R.pp. 155, l. 19 – 156, l. 2; Grant Dep., pp. 60, l. 19 – 61, l. 2.]

The trial against Singleton for maintaining a public nuisance went forward on July 13, 2011. Singleton did not appear and was tried in his absence before a jury. He was found guilty and assessed the fine of $1,092.50. [R.pp. 159-164; 83, ll. 1-11; Municipal Trial Transcript; Singleton Dep., p. 36, ll. 1-11.]

Singleton appealed his conviction to the circuit court on July 29, 2011. [R.p. 167; Dist. Ct. Order, p. 3.] The circuit court affirmed the municipal court conviction of maintaining a public nuisance. Singleton then appealed to this Court, which found on January 7, 2015 that Singleton's original appeal to the circuit court was untimely such that the circuit court lacked appellate jurisdiction over the appeal. [R.pp. 157-158; S.C. Ct. App. Op. No. 2015-UP-009.] As a result of this Court's opinion, the circuit court's

decision on the appeal was vacated, and the original municipal court conviction against Singleton stood.

Singleton thereafter filed the instant suit against Respondents on May 14, 2015. [R.pp. 45-60; Compl.] Following removal of the case to the United States District Court for South Carolina, the District Court granted summary judgment to Respondents on Singleton's 42 U.S.C. § 1983 claim and equal protection, procedural due process, and substantive due process claims. [R.pp. 174-184; Dist. Ct. Order, pp. 10-20.] The District Court noted in its order that Singleton had conceded there was no viable takings claim and further conceded that there had been no condemnation of the structure on the Lot. [R.p. 168; Id. at p. 4, nn. 3-4.] The District Court remanded any remaining state law claims to the Court of Common Pleas for Georgetown County. [R.pp. 182-184; Id. at pp. 18-20, 18, n. 7.]

Following the remand back to the circuit court, Respondents moved for summary judgment on any remaining state law claims, and a hearing on the motion was held on June 1, 2017. [R.pp. 1-9; 109-122; Memo. in Support of Mtn. for Summary Judgment; Hearing Tr.] At the hearing, Singleton's attorney asserted that the only remaining cause of action was a gross negligence claim relating to the alleged intentional failure of Respondents to notify him of his municipal trial date. [R.pp. 118, ll. 17-21;119, ll. 20-21; Hearing Tr., pp. 10, ll. 17-21; 11, ll. 20-21.]

The Trial Court granted summary judgment to Respondents on the gross negligence claim on the grounds that Respondents were immune under the Tort Claims Act and that any gross negligence claim was barred by the doctrine of *res judicata*. [R.pp. 120, l. 22 – 121, l. 13; 126-123; Id. at pp. 12, l. 22 – 13, l. 13; Order.]

## STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). Rule 56(c) provides a motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." Id.; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). The party seeking summary judgment under Rule 56(c) has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis, 358 S.C. at 518, 595 S.E.2d at 822. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 518-19, 595 S.E.2d at 822. "[W]hen

plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Id. at 518, 595 S.E.2d at 822.

## ARGUMENT

**I. Appellant cannot revive on appeal his claims for wrongful taking, condemnation, due process, and equal protection for which (1) the federal district court previously granted summary judgment in Respondents' favor; and (2) Appellant conceded before the circuit court were no longer pending claims in the case.**

In Arguments I, II, III, IV, and V of his Appellant's Brief, Singleton contends the Trial Court erred in granting summary judgment on his causes of action alleging a taking or condemnation and violation of his due process and equal protection rights, including allegations that Respondents engaged in selective enforcement of the City's ordinances. The United States District Court for South Carolina previously found that Singleton conceded he had no viable takings claim and that there had been no condemnation of the structure on the Lot. [R.p. 168; Dist. Ct. Order, p. 4, nn. 3-4.] In addition, the District Court granted summary judgment to Respondents on Singleton's claims arising out of alleged selective prosecution, race discrimination, and violation of equal protection and due process rights. [R.pp. 174-183; Order, pp. 10-18.] Singleton did not appeal these rulings by the District Court; therefore, the grant of summary judgment by the District Court on these claims is now law of the case. "An unappealed ruling is law of the case and requires affirmance." D.R. Horton, Inc. v. Wescott Land Co., 410 S.C. 319, 320, 764 S.E.2d 701, 701 (2014).

Furthermore, at the summary judgment hearing before the Trial Court, Singleton conceded that his only remaining claim in the case following the District Court's remand to the state court was a gross negligence cause of action:

> We would contend that [gross negligence] is the remaining cause of action. And that gross negligence is related to their intentional failure and conscious failure to notify him of the hearing.
>
> . . .
>
> So, the only remaining cause of action we would contend is the gross negligence.

[R.pp. 118, ll. 17-21; 119, ll. 20-21; Hearing Tr., pp. 10, ll. 17-21; 11, ll. 20-21.]

Singleton's argument that the Trial Court erred in granting summary judgment on his takings, condemnation, due process, and equal protection claims is not properly before this Court for review because he abandoned these issues when he conceded that the only remaining claim in the case was gross negligence. Singleton waived any appellate review of these issues because an issue conceded in the trial court cannot be argued on appeal. See State v. Rios, 388 S.C. 335, 341-42, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding a defendant could not argue an issue on appeal when the defendant waived appellate review of the issue by conceding it at trial).

Finally, the evidence before the Trial Court showed there was no taking or condemnation of the structure on the Lot owned by Singleton. Singleton acknowledged that the City never initiated condemnation proceedings against the structure on the Lot. [R.pp. 86, l. 24 – 87, l. 2; 88, ll. 19-23; Singleton Dep. pp., 44, l. 24 – 45, l. 2; 46, ll. 19-23.] He further acknowledged that the City never tore down the structure on the Lot. [R.p. 88, ll. 16-18; Id. at p. 46, ll. 16 -18.] The structure on the Lot collapsed on its own in 2015 after Singleton brought this lawsuit. [R.pp. 84, l. 24 – 85, l. 22; Id. at pp. 42, l. 24 – 43, l. 22.] Singleton agreed that the City could push the debris from the collapse off of the sidewalk. [R.p. 85, ll. 23-24; Id. at p. 43, ll. 23-24.]

Singleton cannot use this appeal to resurrect causes of action for which the District Court previously granted summary judgment in Respondents' favor or for which Singleton conceded before the Trial Court were no longer viable. The Trial Court therefore properly ruled that Singleton had no remaining claims involving takings, condemnation, due process, or equal protection.

## II. The Trial Court properly granted summary judgment to Respondents on Appellant's sole remaining claim of gross negligence because Respondents are immune from liability pursuant to the exceptions to the waiver of governmental immunity under the South Carolina Tort Claims Act.

The Trial Court found that the only potential remaining state law claim asserted by Singleton was a gross negligence claim. At the summary judgment hearing, Singleton's attorney informed the Trial Court that the gross negligence complained of was Respondents' alleged intentional and conscious failure to notify Singleton of the municipal trial court date. [R.p. 118, ll. 19-21; Hearing Tr., p. 10, ll. 19-21.] The Trial Court correctly determined that Respondents were immune from liability for this claim under the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act governs all tort claims in South Carolina against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 562, 455 S.E.2d 688, 689 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); S.C. CODE ANN. § 15-78-20(b) ("The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."); S.C. CODE ANN. § 15-78-70(a) ("[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.").

"The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. CODE ANN. § 15-78-20(f).

In this case, Singleton's claim against Respondents invokes the provisions and immunities of the South Carolina Tort Claims Act. The City is a governmental entity as defined in the Tort Claims Act. See S.C. CODE ANN. § 15-78-30(d) ("Governmental entity" means "the State and its political subdivisions."); §15-78-30(h) ("Political subdivision" includes municipalities).

While the Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are "liable for their own torts in the same manner and to the same extent as a private individual under like circumstances," the Act also provides certain limitations and exceptions to liability. S.C. CODE ANN. §§15-78-40, -60. In particular, governmental entities are not liable for loss resulting from:

> (1) legislative, judicial, or quasi-judicial action or inaction;
>
> (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
>
> . . .
>
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

S.C. CODE ANN. § 15-78-60(1), (2), (4).

Singleton's claim against Respondents arising out of his municipal court conviction for maintaining a public nuisance falls under these exceptions; therefore,

Respondents are not liable for any alleged loss. The City and its employees were engaged in the enforcement of the City's public nuisance ordinances. In addition, Singleton's allegations that Respondents failed to provide him notice of the court date allege action or inaction of a judicial nature. As such, Singleton's complaints against Respondents fall within the above enumerated exceptions to waiver of governmental immunity, and Respondents cannot be liable for any loss alleged by Singleton.[2]

Furthermore, Respondents Grant, Martin, and O'Donnell cannot be sued individually pursuant to S.C. CODE ANN. § 15-78-70(a) which provides that "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable" for any loss. The interactions of Grant, Martin, and O'Donnell with Singleton of which he complains occurred during the scope of their employment and/or official positions with the City, and consequently, these Respondents are protected from individual liability under § 15-78-70(a). Other than a conclusory allegation that these Respondents were acting outside of the scope of their official duties, Singleton did not present any evidence that these Respondents were not acting within the scope of their official duties.

Accordingly, the Trial Court properly determined that the City and the individual Respondents were immune from liability under the Tort Claims Act for the gross negligence claim alleged by Singleton. On this basis, this Court should affirm the grant of summary judgment to Respondents.

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[2] These particular exceptions to the waiver of governmental immunity do not contain an exception for gross negligence; therefore, Singleton's alleged gross negligence claim is encompassed in these exceptions to the waiver of governmental immunity and Respondents are immune for even alleged gross negligence.

## III. The doctrine of *res judicata* bars Appellant's gross negligence claim against Respondents because the issues raised by the gross negligence claim could have been litigated in the previous municipal court proceedings relating to Appellant's conviction for maintaining a public nuisance.

The Trial Court also granted summary judgment to Respondents on Singleton's gross negligence claim pursuant to the doctrine of *res judicata*.[3] In the proceedings below, Singleton alleged that Respondents were grossly negligent by failing to notify Singleton of the municipal trial court date. [R.p. 118, ll. 19-21; Hearing Tr., p. 10, ll. 19-21.] This issue, however, could have been raised in the prior proceedings relating to Singleton's conviction for maintaining a public nuisance to the municipal court or in a timely appeal. This allegation is now barred by the doctrine of *res judicata.*

As observed by the South Carolina Supreme Court:

> *Res judicata* is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. *Res judicata* ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (citing J. Flanagan, South Carolina Civil Procedure p. 642 (1996)).

"*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Plum Creek, 334 S.C. at 34, 512 S.E.2d at 109. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the

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[3] Singleton has not challenged in his appellant's brief the Trial Court's grant of summary judgment to Respondents based on the doctrine of *res judicata*. Therefore, the Trial Court's grant of summary judgment can be affirmed under the two issue rule. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

former suit and any issues which might have been raised in the former suit." Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Plum Creek, 334 S.C. at 34, 512 S.E.2d at 109.

Here, the elements for establishing *res judicata* are present. First, the parties are the same in this litigation as they were in the municipal trial against Singleton for maintaining a public nuisance, i.e., the City and its privies. Second, the subject matter of both the municipal trial and this lawsuit involve the City's issuance of a summons to Singleton for maintaining a public nuisance. Lastly, there was an adjudication in the former litigation, as Singleton was found guilty in the municipal trial and assessed a fine.

Singleton could have raised the issue of lack of notice to the municipal court or in a timely appeal of the conviction but he failed to do so. Singleton is now precluded from collaterally attacking his conviction, which he failed to timely challenge on appeal, in this negligence lawsuit.[4] See Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 710 S.E.2d 67 (2011) (in action brought by patient against inpatient psychiatric facility for false imprisonment, defamation, and intentional infliction of emotional distress, doctrine of *res judicata* precluded patient from collaterally attacking the validity of underlying commitment orders where circuit court had previously affirmed probate court commitment orders). To allow Singleton to effectively challenge his conviction through

[4] In addition, if Singleton had desired to challenge his conviction, the proper procedure would have been to file an action under the Uniform Post-Conviction Relief Procedure Act, S.C. CODE ANN. § 17-27-10, which provides the exclusive remedy for challenging a conviction. See § 17-27-20.

a negligence suit would be to erode the finality of the previous proceedings involving his conviction.

The doctrine of *res judicata* also precludes Singleton's challenges in this appeal of the authority of Respondent Grant to issue the summons (see Arguments VIII and IX). These arguments, which were not raised to the Trial Court at the summary judgment hearing [See R.p. 118, ll. 19-21; Hearing Tr., p. 10, ll. 19-21 (asserting to Trial Court only remaining issue was lack of notice of municipal trial court date)] and not preserved for appeal [See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."), could have also been raised to the municipal court in the prior proceedings or in a timely appeal of the conviction. Again, Singleton did not raise these challenges to his conviction in the prior proceedings and is precluded from doing so now.

As shown, the doctrine of *res judicata* served as a bar to Singleton's gross negligence claim against Respondents. This Court should affirm the Trial Court's grant of summary judgment to Respondents on the gross negligence claim on this basis as well.

## IV. As an additional sustaining ground, Appellant's gross negligence claim is barred by the two-year statute of limitations set forth under the South Carolina Tort Claims Act.

As shown above in Section II hereof, the South Carolina Tort Claims Act governs all tort claims against governmental entities, is applicable to Singleton's gross negligence claim against Respondents, and provides the exclusive remedy for Singleton's gross negligence claim. The Tort Claims Act contains a two-year statute of limitations for actions brought against the State, an agency, a political subdivision, or governmental entity. S.C. CODE ANN. § 15-78-110; Vines v. Self Mem'l Hosp., 314 S.C. 305, 306, 443

S.E.2d 909, 910 (1994); Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 185-86, 534 S.E.2d 1, 5-6 (Ct. App. 2000). Section 15-78-110 provides:

> Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within **two years** after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

Section 15-78-110 (emphasis added).

Before the Trial Court, Singleton claimed that Respondents were grossly negligent by failing to provide notice of the municipal trial court date. [R.p. 118, ll. 19-21; Hearing Tr., p. 10, ll. 19-21.] Singleton knew or should have known of any lack of notice of the municipal trial court date by at least July 29, 2011 when he filed his appeal of his conviction to the circuit court. [R.p. 167; Dist. Ct. Order, p. 3.] By not commencing this action until over three years later, Singleton clearly exceeded the time allowed under Section 15-78-110. Therefore, Singleton's gross negligence claim against Respondents is barred by the statute of limitations. Respondents request this Court to affirm the grant of summary judgment to Respondents based upon the additional sustaining ground of the expiration of the statute of limitations. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

## CONCLUSION

For the reasons set forth herein, Respondents City of Georgetown, Janet Grant, Ricky Martin, and Robert O'Donnell request this Court to affirm the Trial Court's grant of summary judgment on the claims raised against them by Appellant Willie Singleton.

Respectfully submitted,

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March 12, 2018.

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

Respectfully submitted,

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