

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Case No. 2007-CP-28-2099

The Honorable Alison Renee Lee, Circuit Court Judge

EX PARTE: Ralph De Marco Appellant.

In Re:

Audrey S. Dixon, William H. Stokes, III
And Starling Odell Stokes, Sr Respondents,

vs.

Kershaw County Respondents,

RESPONSE TO PETITION FOR REHEARING

Vincent A. Sheheen
William B. Cox, Jr.
Savage Royall & Sheheen, LLP
PO Drawer 10
Camden SC 29020
803 432 4391

Attorneys for Respondents

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SC Court of Appeals

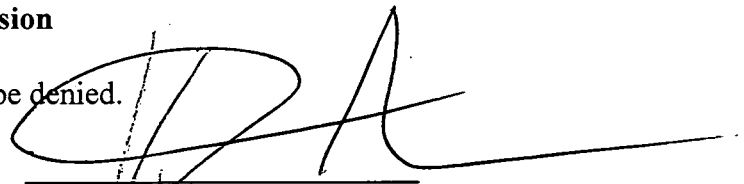
Respondents oppose Appellant's petition for rehearing. The Court denied the appeal of Appellant because Appellant clearly did not preserve the grounds for which he now argues for relief. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to *and ruled upon* by the trial court to be preserved for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000); *Jones v. Daley*, 363 S.C. 310, 609 S.E.2d 597 (Ct. App. 2005)(emphasis added).

The trial court did not rule on the argument that Appellant now raises, asserting that he should have been added as a party because he was an "interested person." Instead, the hearing conducted below and the ruling of the trial court focused on the issue of whether Appellant was an abutting landowner under the statute. The trial court took testimony, admitted numerous exhibits, and heard exhaustive argument. Appellant did not file a rule 59(e) motion to alter or amend asking the trial court to rule on a contention that he was an "interested person" absent being an abutting landowner. In fact, the entire hearing conducted by the trial court and participated in by Appellant discussed whether Appellant could join the lawsuit as an abutting landowner. To allow appellant to shift arguments on appeal would be unfair to both the court and the Respondents.

Appellant's other arguments are not supported by the evidence presented to the trial court.

Conclusion

Appellant's Petition for Rehearing should be denied.



Vincent A. Sheheen
vsheheen@thesavagefirm.com
PO Drawer 10
Camden SC 29021
803 432 4391
Attorney for Respondents

May 23, 2012

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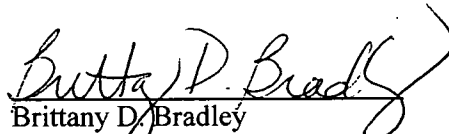
Kershaw County Respondents,

CERTIFICATE OF SERVICE


I, Brittany D. Bradley, do hereby certify that I have served a Response to Petition for Rehearing on May 23, 2012 in the above-captioned appeal on the following individuals by United States Mail. With sufficient first class postage affixed, addressed as follows:

Counsel Served: Jonathan M. Robinson, Esquire
PO Drawer 39
Camden SC 29021

Patrick D. Partin, Esquire
PO Box 1075
Camden SC 29021


Brittany D. Bradley
Secretary for Vincent A. Sheheen
1111 Church Street
Post Office Drawer 10
Camden, South Carolina 29020
(803) 432-4391

SWORN to before me this 23rd day of May, 2012.


Nancy M. Richbourg
Notary Public for South Carolina
My Commission Expires: 9/22/14

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