

89082

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2017-000170
Opinion No. 5629

RECEIVED
MAR 14 2019
SC Court of Appeals

Citizens for Quality Rural Living, Inc.

Appellant,

v.

Greenville County Planning Commission,
and RMDC, Inc.

Respondents.

**RESPONDENT RMDC, INC.'S and
GREENVILLE COUNTY PLANNING COMMISSION'S
PETITION FOR REHEARING**

William A. Coates, SC Bar 1289
ROE CASSIDY COATES & PRICE, P.A.
(1052 North Church Street, 29601)
Post Office Box 10529
Greenville, SC 29603
864.349.2600 – Telephone
864.349.0303 – Facsimile
wac@roecassidy.com
Attorney for Respondent RMDC, Inc.

H. Dean Campbell, SC Bar 14130
COUNTY OF GREENVILLE
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
864.467.7110 - Telephone
dcampbell@greenvillecounty.org
*Attorney for Respondent Greenville
County Planning Commission*

Pursuant to Rule 220, SCACR, respondents RMDC, Inc. and the Greenville County Planning Commission respectfully petition the Court to rehear Case No. 2017-000170 filed February 27, 2019, for the following reasons, to wit:

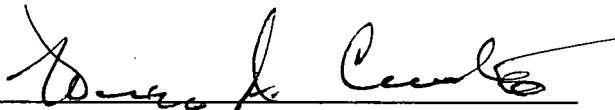
1. The Court's opinion fails to either recognize or discuss established South Carolina law which provides that where a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning, See *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007).

2. Notwithstanding the established law in *Sloan supra*, the Court engaged in statutory construction, and its ruling required the Court to read non-existing language into the statute.

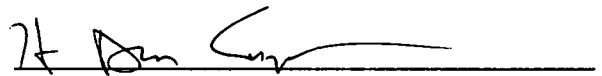
3. The Court's finding that Appellant is entitled to proceed with its declaratory judgment action is based grounds that were neither briefed nor discussed by any party in this litigation.

This motion is supported by the attached memorandum.

Respectfully submitted,



William A. Coates, SC Bar No. 1289
Roe Cassidy Coates & Price, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
864.349.2600 – Phone
wac@roecassidy.com
Attorney for Respondent RMDC, Inc.



H. Dean Campbell, SC Bar No. 14130
County of Greenville
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
864.467.7110 - Phone
dcampbell@greenvillecounty.org
*Attorney for Respondent
Greenville County Planning Commission*

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2017-000170
Opinion No. 5629

RECEIVED
MAR 14 2019
SC Court of Appeals

Citizens for Quality Rural Living, Inc.

Appellant,

v.

Greenville County Planning Commission,
and RMDC, Inc.

Respondents.

**RESPONDENTS RMDC, INC.'S and
GREENVILLE COUNTY PLANNING COMMISSION'S
MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING**

William A. Coates, SC Bar 1289
ROE CASSIDY COATES & PRICE, P.A.
(1052 North Church Street, 29601)
Post Office Box 10529
Greenville, SC 29603
864.349.2600 – Telephone
864.349.0303 – Facsimile
wac@roecassidy.com – E-mail
Attorneys for Respondent RMDC, Inc.

H. Dean Campbell, SC Bar 14130
COUNTY OF GREENVILLE
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
864.467.7110 - Telephone
864.467.5964 - Facsimile
dcampbell@greenvillecounty.org - Email
*Attorney for Respondent Greenville
County Planning Commission*

Respondents RMDC, Inc. and the County of Greenville submit this memorandum in further support of their Petition for Rehearing.

1. THE OPINION FAILS TO DISCUSS THAT THE TERMS OF §6-29-1150 ARE CLEAR AND UNAMBIGUOUS, THUS PRECLUDING THIS COURT'S EXERCISE OF STATUTORY CONSTRUCTION.

While the Court recognized that the cardinal rule of statutory construction is to effectuate the actual intent of the legislature, the Court failed to recognize that “[c]lear and unambiguous statutes require no statutory construction and should be applied by the Court according to their literal meaning.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). The Court may not change the meaning of a clear and unambiguous statute, and a Court may not engage in the exercise of statutory construction of an unambiguous statute.

There is no finding by the Court that the statute in question (§ 6-29-1150) is unclear and ambiguous. Unless the Court makes such a finding, the Court may not engage in statutory construction. Yet, the Court spends a number of pages tracing the legislative history, discussing legislative intent, and referencing to an outside treatise. This is classic statutory construction yet the Court itself noted that the language was “plain.” Thus, the Court’s resort to statutory construction of a plain statute is contrary to established South Carolina law. *Sloan supra*.

2. NOTWITHSTANDING ESTABLISHED SOUTH CAROLINA LAW, THE COURT'S DECISION ENGAGES IN STATUTORY CONSTRUCTION WHICH REQUIRED THE ADDITION OF LANGUAGE NOT FOUND IN THE STATUTE.

In utilizing statutory construction, the Court went beyond simply interpreting the statute as written. In order to reach the conclusion that Appellant had standing, the Court was required to read additional language into the statute.

§ 6-29-1150 (C) provides as follows:

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within 60 days, and the action of the planning commission is final.

§ 6-29-1150 (D)(1) and (D)(2) provide as follows:

(D)(1), Appeal from the decision of the planning commission must be taken to the circuit court within 30 days after actual notice of the decision.

(D)(2), A property owner whose land is the subject of decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with §6-29-1155.

The court found that § 6-29-1150 (c) allows “any party in interest” to appeal staff action to the planning commission. The Court then found that subsection (D)(1) allows “this class of person” to appeal a commission decision to the circuit court. Yet, nowhere in this subsection is there any language allowing “any party in interest” the right to appeal a decision of the planning commission. Thus, the court’s decision went beyond merely interpreting the language of §6-29-1150 as written, and actually added terms which are not present in the statute. Statutory construction does not allow for such a result.

Moreover, it is clear that the General Assembly knows how to provide a right to appeal to a person who is not a property owner but has an interest in a matter. §6-29-820, provides the mechanism for an appeal from the decision of a Board of Zoning Appeals. This statute provides:

“(A) A person who may have a substantial interest in any decision of the board of appeals or any officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court. . .”

Thus, the General Assembly provided for an appeal by either persons of interest or governmental authorities from a decision of a Board Zoning Appeals. Yet, the General Assembly specifically excluded persons of interest when providing for an appeal from a planning commission, allowing only the property owner to appeal.

The Court's decision places it in the position of re-writing a statute which is clear on its face. As our Supreme Court has indicated, it is not within the province of a Court to weigh in on the wisdom of legislative policy determination. *Town of Hilton Head v. Kigre, Inc.*, 208 S.C. 647, 760 S.E.2d 103 (2004). Once the General Assembly has made a choice, "there is no room for courts to impose a different judgment based on their old motions of philosophy." *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1984).

3. THIS COURT DECIDED THE ISSUE OF APPELLANTS' STANDING TO PURSUE A DECLARATORY JUDGMENT BASED ON GROUNDS THAT WERE NEITHER RAISED NOR BRIEFED BY THE PARTIES.

The Court makes specific findings with regard to whether appellant had standing pursuant to the South Carolina Declaratory Judgment Act, §15-53-30 and finds that this statute confers standing on appellant. Yet, §15-53-30 is not the basis on which this issue came to the Court. A review of the briefs in this matter discloses the statute was not addressed. Appellant argued it should have standing because "the public importance exception grants standing to a party who has not suffered a particularized injury where the issue involved is of such public importance that its resolution is required for future guidance." (App. Brief at 18). Appellee's argument in response dealt with the issue of public interest, standing, and whether appellant had properly raised this issue in its Rule 59 motion.


This Court based its decision, not on the issue of public interest standing, but on its interpretation of §15-53-30 and §15-53-60. In support of its ruling, the Court looks to *Greer v. McFadden*, 295 S.C. 14, 366 S.E.2d 263 (Ct. App. 1988). In *Greer*, the Court allowed an improperly framed exception, in large part because the exceptions on appeal were prepared by a layman. Not so here. Appellant's brief was prepared by experienced counsel who is more than competent in these matters. Appellant's brief discusses declaratory judgment standing only in the context of "public importance", and the cases cited all involved that issue. Likewise, Respondents' briefs only addressed the public importance standard. This Court's decision was based on the Act itself, not the public interest issue. This issue was neither briefed by respondents nor raised in appellant's papers. As such the issue was not reasonably clear to respondents. As respondents did not brief the issue decided by the Court, respondents were prejudiced. Even under the lenient *pro se* standard of *Greer*, this issue requires rehearing.

For the reasons set forth above, respondents submit their petition for rehearing is meritorious and should be granted.

Respectfully submitted,



William A. Coates, SC Bar 1289
Roe Cassidy Coates & Price, P.A.
Post Office Box 10529
Greenville, South Carolina 29603
864.349.2600 – Phone
wac@roecassidy.com
Attorney for Respondent RMDC, Inc.



H. Dean Campbell, SC Bar 14130
County of Greenville
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
864.467.7110 – Phone
dcampbell@greenvillecounty.org
Attorney for Respondent Greenville
County Planning Commission

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Citizens for Quality Rural Living, Inc.,)
)
Plaintiffs/Appellants,)
)
)
vs.)
)
Greenville County Planning Commission,)
and RMDC, Inc., et al.)
Defendants/Respondents.)
_____)

APPELLATE CASE NO.: 2017-000170
OPINION NO.: 5629

CERTIFICATE OF SERVICE

RECEIVED
MAR 14 2019
SC Court of Appeals

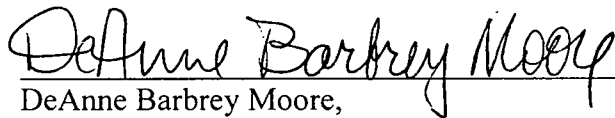
THIS IS TO HEREBY CERTIFY that the undersigned individual has served a copy of Defendants/Respondents Greenville County Planning Commission and RMDC, Inc.'s Petition for Rehearing and Memorandum in Support of Petition for Rehearing to Plaintiffs/Appellants by hand delivery to H. Dean Campbell, Esquire, and to Barbara Faith Martzin, Esquire by Federal Express as follows:

H. Dean Campbell, Jr. Esquire
301 University Ridge, Suite 2400
Greenville County Square
Greenville, SC 29601
Attorney for Respondent Greenville
County Planning Commission

Barbara Faith Martzin, Esquire
33 Market Point Drive
Greenville, SC 29607
Attorney for Appellant

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.


DeAnne Barbrey Moore,
Legal Administrative Assistant to
William A. Coates and V. Clark Price

Greenville, South Carolina
March 13, 2019



Roe Cassidy
Coates & Price PA

William A. Coates
Direct dial: 864•349•2603
E-mail: wac@roecassidy.com

March 13, 2019

VIA Federal Express

Ms. Jenny Abbott Kitchings
Clerk of Court
V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
(803)734-1890

RECEIVED
MAR 14 2019
SC Court of Appeals

RE: Citizens for Quality Rural Living, Inc. v.
Greenville County Planning Commission, et al.
Appellate Case No. 2017-000170

Dear Ms. Kitchings/Ms. Allen,

Enclosed please find an original and six copies of a Motion for Rehearing on behalf of respondents Greenville County Planning Commission and RMDC, Inc. Also enclosed is an original and six copies of a supporting memorandum, along with a Certificate of Service on counsel for Plaintiffs/Appellant and a check for \$50.00 to cover the filing fees.

Please feel free to call me with any questions.

Very truly yours,

ROE CASSIDY COATES & PRICE, P.A.

William A. Coates

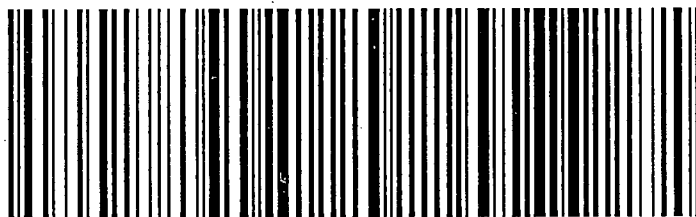
WAC/dbm
Enclosures

cc: H. Dean Campbell (by Hand Delivery)
Barbara Faith Martzin (by Federal Express)

1052 North Church Street
Greenville SC 29601

PO Box 10529
Greenville SC 29603

p 864 349 2600
f 864 349 0303



XH USCA

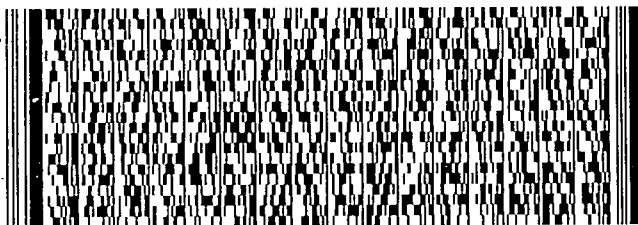
SC-US
CAE
29201

TRK# 0201

7746 9711 0552

PRIORITY OVERNIGHT

THU - 14 MAR 10:30A



SC Court of Appeals

RECEIVED
MAR 14 2019
555 N W 20733ND

DEPT: (803) 734-1890
INV: COLUMBIA SC 29201
REF: 2659.0001

1220 SENATE STREET

SC COURT OF APPEALS CLERK OF COURT

TO THE HON. JENNY ABBOTT KITCHINGS

UNITED STATES US

GREENVILLE, SC 29601

1052 N. CHURCH STREET

ROE CASSIDY COATES & PRICE, PA

LAUREN ALAEMNE

(864) 349-2600

ORIGIN ID: LOKA

SHIP DATE: 13MAR19
ACTWGT: 0.30 LB
CAD: 7636452/NET4100

BILL SENDER

Alignment of Endev Express® obtaining label here