THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2018-000794
Case No. 2016-CP-40-2875

South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and William B. DePass, Jr., individually, and on behalf of all others similarly situated,..... Appellants,

v.

Richland County,..... Respondent,

and

Central Midlands Regional Transit Authority,..... Intervenor-Respondent.

AMENDED BRIEF OF RESPONDENT

Andrew F. Lindemann
LINDEMANN, DAVIS & HUGHES, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Ray E. Jones
PARKER POE ADAMS & BERNSTEIN, LLP
1221 Main Street - Suite 1100
Post Office Box 1509
Columbia, South Carolina 29202
(803) 255-8000

Counsel for Respondent Richland County

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STATEMENT OF THE CASE

This is an appeal from an order by the Circuit Court to dismiss an action for declaratory relief based upon a failure to prosecute.

The Appellants South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and William B. DePass filed this action seeking declaratory relief on May 9, 2016. The action was originally brought against the Respondent Richland County. Later, the Central Midlands Regional Transit Authority (CMRTA) was joined as an intervenor.

By way of background, in 1995, the South Carolina General Assembly enacted Chapter 37 of Title 4 of the South Carolina Code of Laws which is entitled "Optional Methods for Financing Transportation Facilities" (hereinafter referred to as the "Transportation Act"). *See*, 1995 Act No. 52. Section 1 of the Transportation Act sets forth a preamble to the Act with legislative findings that state as follows:

> In furtherance of the powers granted to the counties of this State pursuant to the provisions of Section 4–9–30, and Section 6–21–10 *et seq.*, of the 1976 Code, each of the counties of this State is authorized to establish transportation authorities and to finance, following the public hearing and referendum required in this act, the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities including,

but not limited to, the South Carolina Department of Transportation.

See, 1995 Act No. 52, § 1.[1]

On July 18, 2012, the Richland County Council enacted Ordinance Number 039-12HR for the purpose of levying a one percent sales and use tax pursuant to S.C. Code Ann. § 4-37-30 of the Transportation Act (hereinafter referred to as the "Penny Tax").[2] The Penny Tax Ordinance provided for a referendum to be held on November 6, 2012. The Ordinance also provided for the County's implementation of the Penny Tax upon approval by the electorate. On November 6, 2012, the voters of Richland County approved the referendum.[3]

Following approval of the referendum, Richland County began establishing the framework for the implementation of the Transportation Penny Program to be

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[1] The title to 1995 Act No. 52 states that the Transportation Act was intended "to authorize counties to establish optional methods for the financing of transportation facilities including the acquisition, construction, equipment, and operation of highways, roads, streets, bridges, and other transportation-related projects." *See*, 1995 Act No. 52. The list of transportation-related projects was expanded in 2000. The title to 2000 Act No. 368 states that the amendment was "to provide that the proceeds of the tax may be used for mass transit systems and greenbelt projects." *See*, 2000 Act No. 368.

[2] Richland County chose not to adopt a transportation authority as permitted by the Transportation Act.

[3] The results of the referendum were challenged to the Richland County Board of Elections and Voter Registration, which denied the protest. An appeal was filed to the State Board of Canvassers, which affirmed the decision of the County Board. Thereafter, in *Letts v. Richland County*, Appellate Case No. 2012-213679, the petitioner sought a writ of certiorari to review the decision of the State Board. On March 21, 2013, the South Carolina Supreme Court unanimously denied the petition for writ of certiorari.

paid for by the sales and use tax collected pursuant to the referendum. The Penny Tax was levied and collected for Richland County effective May 1, 2013.

The Appellants filed this action challenging the legality of Richland County Ordinance Number 039-12HR including categories of expenditures that have been made in accordance with that Ordinance.

In September 2016, the parties entered into a Consent Order for Complex Case Designation in which the parties agreed to the following:

> In a case with similar facts and legal issues, the case was designated complex and assigned to Judge G. Thomas Cooper. See *Richland County,* SC, *and CMRTA v. SCDOR and Rick Reames, Ill, in his Official capacity as its Director* v. *Richland PDT, a joint venture* consisting of M.B. Kahn Construction Company, Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC, as a unit and individually, *CA# 16-CP-40-310.*
>
> Both cases challenge the validity of Richland County's Ordinance authorizing a penny tax and the use of penny tax funds by Richland County. It is expected there will be significant discovery sought in *this* case because of the issues in the case and there may be similar legal and administrative issues that would require duplication of, and potential inconsistent results, were the cases not assigned to the same trial judge.

(R. 65-66). (Emphasis in original). That consent order thus explained that there is another action pending whereby the South Carolina Department of Revenue (SCDOR) has asserted claims with "similar facts and legal issues" as the present case. That litigation (referred to as "SCDOR litigation") resulted in an appeal being filed to the South Carolina Supreme Court after the Circuit Court granted the

County's petition for mandamus and denied motions for temporary injunction filed by both parties.

In the present case, the Circuit Court issued a Consent Scheduling Order on November 18, 2016, as agreed to by the parties, that set a discovery deadline of July 17, 2017, a dispositive motions deadline of September 18, 2017, and a trial date after October 18, 2017. (R. 63). The parties never sought any extensions of those deadlines.

Ultimately, the Appellants initiated and engaged in absolutely no discovery. No written discovery was served, and no depositions were scheduled or taken. This was despite their recognition that "there will be significant discovery sought in *this* case" as well as an order by the Circuit Court denying an early motion to dismiss the First Cause of Action.[4]

On September 18, 2017, the County served its Motion to Dismiss and/or Motion for Summary Judgment. (R. 174-179).[5] The County raised a number of grounds including a request for dismissal given the Appellants' failure to

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[4] In the Amended Order Denying Motions to Dismiss and Motion for Judgment on the Pleadings filed March 27, 2017, the Circuit Court wrote as follows: "The Court finds that the issue in the First Cause of Action is not one that should be decided on judgment on the pleadings, but rather should be developed factually and legally through the course of the litigation. There has been no discovery in this case." (R. 37).

[5] The Appellants did not file a motion for summary judgment seeking an adjudication of the merits of their seven causes of action. Instead, after receiving the County's motion, the Appellants served their first sets of written discovery on September 22, 2017, which was more than two months after the discovery deadline as contained in the Consent Scheduling Order.

prosecute. A hearing was held on October 26, 2017, before Circuit Court Judge G. Thomas Cooper, Jr., to whom this action was assigned as well as the SCDOR litigation. (R. 328-373). On November 30, 2017, the Circuit Court issued an Order Granting Motion to Dismiss wherein the court found that "the Plaintiffs have taken no action to prosecute their claims in the eighteen or so months since the Complaint was filed on May 9, 2016." (R. 8). The Circuit Court concluded that that "the dismissal of this action under Rule 41(b) and the inherent authority of the Court is warranted." (R. 8). The Circuit Court did not address any of the other grounds for summary judgment that had been raised by the County.

The Appellants filed a motion for reconsideration that was denied by Order filed April 17, 2018. They then filed this appeal to this Court. In the interim, while the Appellants' motion for reconsideration was pending, the Supreme Court issued its decision in the SCDOR litigation, which resulted in a temporary injunction being issued against the County. The Supreme Court also remanded the SCDOR litigation for further proceedings, including discovery and an adjudication on the merits. *See*, *Richland County v. South Carolina Department of Revenue*, 422 S.C. 492, 811 S.E.2d 758 (2018).

STANDARD OF REVIEW

"The question of whether an action should be dismissed ... for failure to [prosecute] is left to the discretion of the circuit [court] and [its] decision will not be disturbed except upon a clear showing of an abuse of such discretion." *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802, 804 (1970). "An abuse of discretion occurs when the [circuit court's] ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987).

In the "standard of review section of their brief, the Appellants initially agree that the standard of review is abuse of discretion. However, citing to *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006), the Appellants prematurely begin addressing the merits and describe what they purport to be appropriate evidentiary factors for evaluating an order of dismissal for failure to prosecute. Those factors are not part of nor impact the standard of review, and as discussed at length below, are not necessarily appropriate or exclusive factors in evaluating whether the trial court committed an abuse of discretion under the "unreasonable neglect" standard as adopted and applied by the Supreme Court.

At any rate, given the Appellants' reliance on *McComas*, it is quite telling that this Court in that case described the standard of review simply as follows: "Whether an action should be dismissed for failure to prosecute is left to the

discretion of the trial court judge, and his decision will not be disturbed, except upon a clear showing of an abuse of discretion." 626 S.E.2d at 904, *citing Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802, 804 (1970). That is the standard of review that should be applied in the case at bar.

ARGUMENTS

I. The Circuit Court did not abuse its discretion in dismissing this action for the Appellants' failure to prosecute.

The Circuit Court dismissed the Appellants' Amended Complaint for Declaratory Judgment for failure to prosecute. The Appellants contend that the Circuit Court erred in applying the wrong legal standard and in not crediting their attempts to prosecute the action. Their arguments lack merit.

Rule 41(b), SCRCP, authorizes a court to dismiss an action based upon a plaintiff's failure to prosecute. In *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802 (1970), the Supreme Court held that "it is within the inherent power of the court to dismiss an action for failure to prosecute." 175 S.E.2d at 803. The Supreme Court has further held that "[t]he plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause. This authority is necessary if the courts are to control and efficiently manage an ever-expanding docket." *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757, 758 (1983). In *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997), the Supreme Court also explained that "[p]rovision is made in federal and state statutes or rules of practice for dismissal of civil actions for failure of prosecution by the plaintiff. However, the power of trial courts to dismiss a case for failure to

prosecute with due diligence is generally considered inherent and independent of any statute or rule of court. Such power is deemed to be necessarily vested in trial courts to manage their own affairs so as to achieve orderly and expeditious disposition of cases." 493 S.E.2d at 832.

Thus, the controlling standard, according to Supreme Court authority, is "unreasonable neglect." That is the very standard that the Circuit Court applied in this case. The Circuit Court found, as fully supported by the record, a "lack of activity in prosecuting this action by the Plaintiffs," which warranted a dismiss "under Rule 41(b) and the inherent authority of the Court." (R. 8). The Circuit Court provided a specific explanation for its conclusion:

> [T]he record reflects that the Plaintiffs have taken no action to prosecute their claims in the eighteen or so months since the Complaint was filed on May 9, 2016. The Plaintiffs pursued no discovery as part of this lawsuit. No written discovery was timely served by the Plaintiffs, and no depositions have been taken. In the Amended Order Denying Motions to Dismiss and Motion for Judgment on the Pleadings filed March 27, 2017, the Court wrote as follows: "The Court finds that the issue in the First Cause of Action is not one that should be decided on judgment on the pleadings, but rather should be developed factually and legally through the course of the litigation. There has been no discovery in this case." Since that time, the Court is advised that discovery has still not been conducted. In short, this Court finds that no timely discovery has been initiated or completed, and based on the Scheduling Order filed November 18, 2016, the discovery deadline has now expired.

(R. 8). (Footnotes omitted).

Nonetheless, the Appellants suggest that the Circuit Court failed to apply the correct legal standard. They point solely to this Court's decision in *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006), and suggest that this Court required "extensive analytical standards" beyond the "unreasonable neglect" standard as adopted and applied by the Supreme Court. That is a misreading of *McComas,* and to the extent that *McComas* may be construed as altering the "unreasonable neglect" standard adopted by the Supreme Court, it should be disregarded. S.C. Const art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents"); *State v. Cheeks*, 400 S.C. 329, 733 S.E.2d 611, 618 (Ct. App. 2012) (recognizing the Court of Appeals is bound by the decisions of the Supreme Court).

In actuality, this Court in *McComas* states at the outset of the opinion that "the trial court may properly dismiss an action for plaintiff's *unreasonable neglect* in proceeding with her cause.". 626 S.E.2d at 904, *citing Don Shevey, supra.* (Emphasis added). This Court later cites to the "federal standard" as described in Fourth Circuit case law but also acknowledges a clear distinction between the "delay and contemptuous conduct [standard] as required by the federal cases" and the "unreasonable neglect [standard], as required by the South Carolina case law." 626 S.E.2d at 905. There is no indication that this Court actually adopted or intended to adopt the federal standard as the law in South Carolina.

Thus, the applicable standard under South Carolina law has been and continues to be "unreasonable neglect." That is the legal standard applied by the Circuit Court in this case, and hence, there was no error of law committed that would warrant a reversal.

Notably, this Court in *McComas* also recognized that "dismissals for failure to prosecute are fact-intensive issues." 626 S.E.2d at 905. Under an abuse of discretion standard, the reviewing court may not substitute its own judgment or findings for the trial court's factual findings. Instead, the appellate court only ensures that those findings have evidentiary support in the record. In the case at bar, the Circuit Court's conclusion of "unreasonable neglect" by the Appellants is fully supported in the record. The Appellants dispute this by arguing that a pre-suit Freedom of Information Act (FOIA) request constitutes the conduct of discovery in the case. They also argue that opposing dispositive motions somehow counteracts the Circuit Court's finding of unreasonable neglect. They do not. As the Circuit Court ruled, the denial of the County's initial motion to dismiss was specifically premised on its finding that the claims required factual development and the court's recognition that no discovery had yet taken place. The requisite factual development is necessarily achieved in a case such as this through the discovery process. Even though the Appellants may have obtained documents by means of a pre-suit FOIA request, that does not make those documents admissible in this action. The authenticity and relevance of that evidence must be established

through witnesses with knowledge of those documents and with knowledge of Richland County's Penny Tax Program.[6] No such evidence was ever developed in this case by depositions or otherwise, and as the Circuit Court noted, the discovery period had ended in accordance with a scheduling order issued with the consent of the parties and for which there was never a requested extension. Most telling is the fact that, in response to the County's filing of its summary judgment motion, the Appellants immediately served its *first* sets of written discovery. As the Circuit Court correctly noted, that belated attempt to initiate the very first discovery in the litigation came more than two months after the close of discovery and seventeen months after the suit was first filed.[7]

In short, there is sufficient evidence to support the Circuit Court's finding of "unreasonable neglect" on the part of the Appellants in their lack of prosecution of

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[6] The record bears out this point. In a desperate attempt to defend against the County's motion for summary judgment on the merits, the Appellants filed random documents without any supporting testimony – by deposition or affidavit -- to authenticate or otherwise establish their admissibility, including a newspaper article and an affidavit of an SCDOR employee that had been filed in the SCDOR litigation, was inadmissible hearsay, and had been the subject of an order striking significant portions of that affidavit. The Appellants even included an internal memorandum by the County Administrator that has been badly misconstrued by the Appellants to suggest that the Penny Tax Program had "$35 million in overdrafts" when the memorandum was referencing other capital project funds. That memorandum was simply attached to a memorandum filed with the court and was not authenticated or explained by deposition testimony or any other means.

[7] Notably, the Consent Order for Complex Case Designation as agreed to by the parties also recognized early in the litigation that "[i]t is expected there will be significant discovery sought in *this* case because of the issues in the case." (R. 65-66).

the case.[8] In this respect, this case is no different from *Don Shevey*, *supra*, where the Supreme Court found that the appellant "failed to ... timely prosecute the case" where it "took no action" for a period of nineteen months and "completely disregard[ed] [its] burden of proceeding with due diligence." 301 S.E.2d at 758. As was the result in *Don Shevey*, the Circuit Court in this case did not abuse its discretion in dismissing this action under Rule 41(b) and the inherent authority of the court.

II. The judicial policy that duplicative litigation is disfavored and should be avoided is an additional sustaining ground for the Circuit Court's dismissal of the Appellants' action.

As an additional sustaining ground,[9] the County submits that the Appellants should not be permitted to proceed with this action because, as is evident from the Appellants' opening brief, this action is duplicative to and essentially governed by

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[8] Because South Carolina has not adopted the "delay and contemptuous conduct" standard from the federal courts, the Appellants' argument that they were not sanctioned by the court or in violation of any court order is not material. What is material is the Appellants' neglect to prosecute the action within the time frames established by the scheduling order.

[9] In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "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." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* *See also*, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

the action brought by SCDOR against Richland County and CMRTA.[10] In addition, in the SCDOR litigation, the Supreme Court has recognized that SCDOR has the unique statutory authority to oversee the County's Penny Tax expenditures, and hence, it is a waste of judicial resources as well as unfair to the litigants for a taxpayer to pursue the same "oversight" litigation that SCDOR is already pursuing in its governmental regulatory role.

In effect, the rationale of Rule 12(b)(8), SCRCP, is applicable here. In *State ex rel. Wilson v. Condon*, 410 S.C. 331, 764 S.E.2d 247 (2014), the Supreme Court recognized that "although the parties in this matter and the federal case are not identical, the principle underlying Rule 12(b)(8) of the South Carolina Rules of Civil Procedure that duplicative litigation should be avoided applies to this case." 764 S.E.2d at 248. The same in true with the case at bar. Although SCDOR and the Appellants are not technically the same party, they serve the identical roles in the two lawsuits brought against the County and CMRTA over the same issues and concerns. In fact, the Circuit Court granted the Appellants taxpayer and public importance standing on the premise that "[a] decision is necessary for future guidance." (R. 49). That same "future guidance" is equally achievable through the SCDOR case, and hence, there is no need for the duplicative litigation which the

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[10] This should not be disputed. In the Consent Order for Complex Case Designation, the parties agreed that the SCDOR litigation is "a case with similar facts and legal issues" and that "there may be similar legal and administrative issues that would require duplication of, and potential inconsistent results were the cases not assigned to the same trial judge." (R. 65-66).

Supreme Court has cautioned is to be "avoided," particularly in inherently complex and novel cases such as the legality of same-sex marriage in *Condon* and the construction and application of the Transportation Act at issue here and in the SCDOR litigation.

In fact, the SCDOR case is the more appropriate case to proceed at this juncture. That case is currently pending in the Circuit Court after remand from the Supreme Court. Discovery is proceeding in that case. The Supreme Court and the Circuit Court have implemented a temporary injunction, and "guidelines" as required by the Supreme Court have been prepared and adopted by the Circuit Court to govern the County's expenditure of the Penny Tax revenues as part of that temporary injunction. More importantly, the Supreme Court has recognized that SCDOR has "extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and ... Title 12 of the South Carolina Code confer[s] upon DOR a duty in ensuring the County's expenditures of Penny Tax revenues comply with the revenue laws DOR is charged with enforcing." *Richland County v. South Carolina Department of Revenue*, 422 S.C. 492, 811 S.E.2d 758, 765 (2018). The Supreme Court also described SCDOR as "the agency statutorily tasked with administering the Penny Tax program" and further noted that "the expenditure of millions of dollars of Penny Tax revenues is an issue of wide concern ... to DOR." *Id.* Thus, under the Supreme Court's reasoning, SCDOR would be the a more appropriate party than the Appellants to prosecute claims for

declaratory and injunctive relief within this context. In short, the avoidance of duplicative litigation is an additional basis for upholding the Circuit Court's dismissal of the Appellants' lawsuit.

III. The Appellants are not entitled to a ruling on the merits of their claims against Richland County given that the merits have not been adjudicated in the Circuit Court.

In Section III of their opening brief, the Appellants appear to argue the merits of their claims against Richland County and oddly seem to suggest that they are entitled to prevail on the merits.[11] That would be improper for several obvious

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[11] In contravention of Rule 208(b)(1)(B), SCACR, the Appellants' opening brief did not include a statement of issues on appeal. After the Respondents had filed their initial briefs and pointed out that deficiency, the Court allowed the Appellants to file an amended brief that now includes a statement of issues on appeal. Nonetheless, as their third issue on appeal, the Appellants write: "Did Appellants plead and supported [sic] valid claims?" *See*, Appellants' Brief, p. 1. Based thereon, the County is still unable to determine whether the Appellants are actually seeking judgment in this Court on the various claims asserted in their Amended Complaint for Declaratory Judgment. In Section III of the brief, they claim to have pled and supported "valid claims," but it is unclear whether they are arguing that they are entitled to judgment as a matter of law (which they are not) or whether they are showing that summary judgment in the County's favor would have been denied if the Circuit Court had reached those issues grounds.

In short, the Appellants' third "issue on appeal" should be dismissed on procedural grounds. Rule 208(b)(1)(B) requires that "[t]he statement [of issues on appeal] shall be concise and direct as to each issue .... Broad general statements may be disregarded by the appellate court." Rule 208(b)(1)(B), SCACR. This Court has cautioned that "[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." *Forest Dunes Associates v. Club Carib, Inc.*, 301 S.C. 87, 390 S.E.2d 368, 370 (Ct. App. 1990). With respect to the Appellants' third "issue on appeal" the Court and the Respondents are left to "grope in the dark" as to the issue or issues raised, and as a result, that portion of the appeal should be dismissed.

reasons. First, the Appellants never filed a motion for summary judgment in the Circuit Court, so they are certainly not entitled to a judgment on the merits on appeal. In other words, they should not be able to obtain relief on appeal that was never sought in the lower court. Second, the Circuit Court never ruled on the merits of the County's motion for summary judgment, with the exception of granting a dismissal for failure to prosecute. Therefore, in the event that that dismissal is reversed, the merits of the Appellants' claims and the County's defenses must be remanded for a decision on the merits. This Court certainly has no authority to grant judgment to an appellant on claims the merits of which the Circuit Court has not as yet adjudicated. In short, the merits of the Appellants' claims and the County's defenses are not preserved for a decision on appeal.[12]

In addition, the County also points out that the Appellants' reliance on the Supreme Court's decision in the SCDOR litigation is misplaced. SCDOR and the County appealed from the denial of motions for temporary injunctions and the grant of a petition for mandamus. As part of that appeal, the Supreme Court determined that SCDOR has oversight authority as discussed above and standing to pursue its claims against the County. The Supreme Court did not, however, decide

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[12] In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by,* the trial court." *Id.* (Emphasis in original).

the merits of any of SCDOR's claims. The SCDOR litigation was still at the pleading stage when the appeal was taken; no discovery had been conducted, and no dispositive rulings on the merits of SCDOR's claims were before the Supreme Court. Each of the Supreme Court's rulings, therefore, was issued within the context of affirming the mandamus issued by the Circuit Court and granting SCDOR the temporary injunction that it sought but had been denied in the Circuit Court. *See*, *Richland County*, 811 S.E.2d at 769 (Supreme Court "directed the circuit court, no later than thirty days following remand, to enter the preliminary injunction in accordance with this opinion").

By their very nature, "[t]emporary injunctions are interlocutory, tentative, and impermanent and are superseded by the final judgment rendered on the merits." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, 597 (2001). "The sole object of a temporary injunction is to preserve the subject of the controversy in its condition at the time of the order until opportunity is offered for full and deliberate trial investigation." *Id.* "[A] temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 413 S.E.2d 824, 826 (1992). "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction." *Id.* Most importantly, "[t]he sole purpose

of a temporary injunction is to preserve the status quo." *County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902, 905 (Ct. App. 2002).

Consequently, to the extent this Court finds it necessary to apply the rulings by the Supreme Court in the SCDOR litigation, it is critical that the Court be constrained by the fact that the Supreme Court has not, as yet, heard or decided the merits of any claims asserted by SCDOR.[13] Thus, those interlocutory rulings are not dispositive in this litigation as the Appellants seem to suggest.[14]

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[13] The Court is also cautioned that the Appellants do not always accurately construe the Supreme Court's opinion. For instance, the Appellants write: "The Court ruled that the Transportation Act does not authorize Penny Tax revenues for expenditures other than capital costs of transportation projects." *See*, Appellants' Opening Brief, p. 22. In actuality, the Supreme Court explained that "[a] proper expenditure of Penny Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project." *Richland County*, 811 S.E.2d at 768.

[14] In the event that this Court disagrees with the County and proceeds with addressing the merits of the Appellants' seven causes of action, the County relies upon and incorporates herein the arguments set forth in its supporting memorandum filed on October 30, 2017, and the proposed order submitted to the Circuit Court on November 17, 2017. (R. 223-233, 266-284).

CONCLUSION

Based on the foregoing analysis and discussion, the Respondent Richland County respectfully requests that this Court affirm the dismissal of the Appellants' Amended Complaint for Declaratory Judgment.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES P.A.

BY: _____

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

-and-

RAY E. JONES #11322
PARKER POE ADAMS & BERNSTEIN, LLP
1221 Main Street - Suite 1100
Post Office Box 1509
Columbia, South Carolina 29202
(803) 255-8000

Counsel for Respondent Richland County

February 4, 2019

CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent Richland County certifies that the Final Amended Brief of Respondent complies with Rule 211(b), SCACR.

LINDEMANN, DAVIS & HUGHES P.A.

BY: _____

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Respondent Richland County

February 4, 2019

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent Richland County certifies that the Final Amended Brief of Respondent complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

LINDEMANN, DAVIS & HUGHES P.A.

BY: _____

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Respondent Richland County

February 4, 2019