

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

RECEIVED

APR 23 2019

S.C. SUPREME COURT

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2019-000508

Heather Rousey Piper, Plaintiff,

v.

Kerry Grissinger, William P. Hardee, and Paul E. Lesondak, Defendants,

Of Whom Kerry Grissinger and Paul E. Lesondak are the Appellants,

and Of Whom Heather Rousey Piper is the Respondent.

RESPONDENT'S RETURN TO PETITIONERS' WRIT OF CERTIORARI

Jessica Clancy Crowson, Esq. SC Bar No.: 68626
Christopher L. Boguski, Esq. SC Bar No.: 100546
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street Suite 1200
Columbia, SC 29201
(803) 256-1268
Attorneys for Respondent

ARGUMENTS..... 2

- i. **The Appellants failed to file a Petition for Writ of Certiorari in accordance with Rule 242(d) and have failed to identify any special or important reason as to why the Court should grant such review per Rule 242(b)**..... 2
- ii. **The Court of Appeals correctly affirmed the decision of the Circuit Court finding that Respondent has an easement for ingress and egress along “the means of access known as the ‘Gandy Easement’”**..... 3

CONCLUSION 4

ARGUMENTS

- i. **The Appellants failed to file a Petition for Writ of Certiorari in accordance with Rule 242(d) and have failed to identify any special or important reason as to why the Court should grant such review per Rule 242(b)**

As an initial matter, the Petition for Writ of Certiorari filed by Appellant-Petitioners dated March 24, 2019, fails to comply with the basic requirements of Rule 242(d), SCACR. Most notably, the Appellant-Petitioners do not clearly state what question is present for review. Instead, the Appellant-Petitioners copy and paste the decision of the Court of Appeals, followed by a sentence in which counsel for the Appellant-Petitioners states that “he lacks the ability to understand the application of the grounds cited to this appeal.” (Petition for Writ of Certiorari, p. 5). Counsel for Appellant-Petitioners then goes on to state that, “[by the] Petition, he attempts to respond to what he intuits to be the Court of Appeal’s rationales.” *Id.* This is then followed by a general statement that the Appellant-Petitioners “reiterate the arguments as stated in [their] Reply Brief.” *Id.* Without more, the Petition is deficient, and the Respondent is only left to guess as to why the instant Petition was filed.

Furthermore, South Carolina Appellate Court Rule 242(d)(4) states that a petition for writ of certiorari shall contain, among other things, a “direct and concise argument in support of the petition” with a “citation of authority and specific reference to pertinent portions of the Record on Appeal”. As applicable in the instant proceeding, the “[f]ailure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.” *Id.* Here, the Appellant-Petitioners have failed to present a direct or concise argument that provides any information as to the points for which he is requesting consideration.

Additionally, and perhaps most notably, the Appellant-Petitioners fail to identify, or even reference, how the decision given by the Court of Appeals is in conflict with a prior decision of the Supreme Court, as required by Rule 242(b), SCACR. Finally, the Appellant-Petitioners fail to include the Appendix as required by Rule 242(e), SCACR.

In sum, the Appellant-Petitioners have failed to comply with the requirements as set forth by Rule 242, SCACR, and as such, the Appellant-Petitioners Petition should be denied.

- ii. **The Court of Appeals correctly affirmed the decision of the Circuit Court finding that Respondent has an easement for ingress and egress along “the means of access known as the ‘Gandy Easement’”**

The Appellant-Petitioners did not properly preserve the issues raised in their Initial Brief filed with the Court of Appeals. The Court of Appeals correctly found this to be the case and stated as such in its Opinion, No. 2019-UP-030, filed January 16, 2019. “It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The record must show that an issue has been properly raised to the lower court. See York v. Conway Ford, Inc., 325 S.C. 170, 480 S.E.2d 726 (1997) (an objection made during an off-the record conference which is not made part of the record does not preserve the question for review). Furthermore, the lower court must rule upon the issue for it to be preserved on review. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997).

The Court of Appeals additionally noted the lack of a Rule 59(e), SCRCPP, motion at the trial level by the Appellant-Petitioners, which would have been the appropriate method for seeking to alter or amend the Order, if such alteration was warranted. In re Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (“When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move,

pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal.”)


Furthermore, the Petition for Rehearing submitted by Appellant-Petitioners to the Court of Appeals, dated January 30, 2019, sought to attach documents which were not part of the trial before the Circuit Court and were not included on the Record on Appeal, and which Appellant-Petitioners again reference in their Writ of Certiorari. Even had these documents been included (specifically, a proposed Order and e-mails related to the same submitted to the Circuit Court Judge by the Appellant-Petitioners), such documents would have done little to remedy the fact that the Appellants did not properly preserve the issues raised in their Initial Brief for appellate review. Simply put, Appellants-Petitioners are dissatisfied with the trial court Order granting Respondent access via the Gandy Easement (as described in the Record on Appeal) and have attempted to base this continuing appeal on issues that were never raised to or ruled upon by the trial court.

CONCLUSION

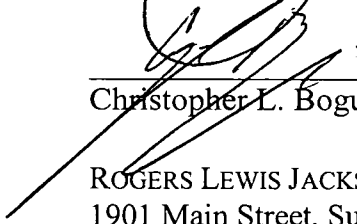
For the reasons stated above, Respondent respectfully requests that the Appellant-Petitioners' Request for Writ of Certiorari be denied.

[Signature Page Follows]

Respectfully Submitted,



Jessica Clancy Crowson, Esq. SC Bar No.:68626



Christopher L. Boguski, Esq. SC Bar No.:100546

ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
(803) 256-1268
Attorneys for Respondent

April 23, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

RECEIVED

APR 23 2019

S.C. SUPREME COURT

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2019-000508

Heather Rousey Piper, Plaintiff,

v.

Kerry Grissinger, William P. Hardee, and Paul E. Lesondak, Defendants,

Of Whom Kerry Grissinger and Paul E. Lesondak are the Appellants,

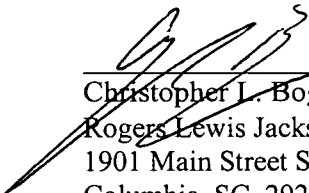
and Of Whom Heather Rousey Piper is the Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the *RESPONDENT'S RETURN TO PETITIONERS' WRIT OF CERTIORARI* and *RESPONDENT'S MOTION FOR DISMISSAL* by depositing a copy of the same in United States Mail, postage prepaid, on April 23, 2019, to Appellants' Attorney of record and other parties, listed herein:

John Martin Foster
PO Box 106
Rock Hill, SC 29731-6106

William P. Hardee
976 Columbia Road
Chester, SC 29706
Pro Se Defendant


Christopher L. Boguski, Esq. SC Bar No.: 100546
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street Suite 1200
Columbia, SC 29201
(803) 978-2832
Attorneys for Respondent