THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Civil Action No. 2017-CP-23-03372
Appellate Case No. 2018-001393

Greenville Bistro, LLC, a South Carolina Limited Liability Company, d/b/a Buck's Racks & Ribs, and Frontage Road Associates, Inc., a South Carolina Corporation, ... Respondents,

v.

Greenville County, a Political Subdivision of the State of South Carolina, and Will Lewis, in his Official Capacity as Sheriff of Greenville County, ... Appellants.

APPELLANTS' FINAL BRIEF

DEVLIN & PARKINSON, P.A.

John R. Devlin, Jr., S.C. Bar No. 1667
P.O. Box 10387
Greenville, SC 29603
(864) 242-4050
(864) 242-4277-Facsimile
John.devlin@devlinparkinson.com

Scott D. Bergthold, Admitted Pro Hac Vice
Law Office of Scott D. Bergthold, P.L.L.C.
2290 Ogletree Ave., Suite 106
Chattanooga, TN 37421
(423) 899-3025
(423) 899-3029-Facsimile
sbergthold@sdblawfirm.com

Attorneys for Appellants

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Preliminary Statement

Greenville County appeals a May 17, 2018 order (the "2018 Order") denying injunctive relief to stop ongoing violations of two separate County ordinances. Because the trial court abused its discretion in denying relief, this Court should reverse with instructions that an injunction issue.

Under South Carolina law, a local government is entitled to an injunction if it shows that it has an ordinance covering a situation, and that the ordinance is being violated. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 531 S.E.2d 518 (2000). Here, uncontroverted evidence shows that Greenville Bistro, LLC ("GB") operates a nightclub in an S-1 district in violation of the Zoning Ordinance. The County is thus entitled to an injunction under the Zoning Ordinance.

Uncontroverted evidence also shows, separately, that GB operates an adult cabaret, contrary to the location restrictions in the County's 1995 Sexually Oriented Business Ordinance ("1995 SOB Ordinance" or "Ordinance 2673"). *Cf. Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003)[1] (affirming injunction, obtained under 1995 Ordinance, against adult cabaret at *this location*). Thus, the court should have enjoined GB under that ordinance.

Nothing in the trial court's order justifies its denial of injunctive relief.

First, the trial court failed to address the County's motion for an injunction under the Zoning Ordinance. (R. pp. 66-67.) Indeed, the word "nightclub" does not appear in the trial court's order, even though the evidence shows that GB charges a cover and serves alcohol to a predominantly adult clientele while providing live dancing. The court thus abused its discretion by denying relief against the ongoing violations of the Zoning Ordinance.

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[1] One portion of the *Kenwood Enterprises* decision that is not relevant here—which deals with the rule for stating a takings claim—was overruled by *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005).

Second, the court held that under Rule 205, SCACR, the pending appeal of an injunction against a 2017 amendment ("Ordinance 4869") to the 1995 SOB Ordinance barred consideration of the County's request for injunctive relief under the 1995 SOB Ordinance. But the 2017 Amendment simply added one way—regularly featuring "semi-nudity"—for an establishment to qualify as an adult cabaret, and did not take away from the original definition of that term. The appeal addresses *only* "that portion" of the appealed order that enjoins the 2017 Amendment. (R. p. 100.)

More important, the evidence shows that GB is an "adult cabaret" as defined by the 1995 SOB Ordinance, independent of the language that the 2017 Amendment added. Because GB is illegally operating an adult cabaret as defined by the County's preexisting, court-tested law, the court should have entered an injunction prohibiting GB's operation of a sexually oriented business (adult cabaret) at its present location—just like the injunction affirmed by the Supreme Court in *Kenwood Enterprises*.

Statement of Issues on Appeal

To obtain an injunction, a county need only show "(1) that it has an ordinance covering the situation; and (2) that there is a violation of that ordinance." *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 905 (Ct. App. 2002) (quoting *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000)).

1. Greenville County showed that its Zoning Ordinance prohibits nightclubs in the S-1 zoning district, and that GB is operating a nightclub in that district. Did the trial court abuse its discretion in failing to enjoin GB's operation in violation of the Zoning Ordinance?

2. The County also showed that its 1995 SOB Ordinance prohibits an adult cabaret within 1,500 feet of sensitive land uses (e.g., residential districts, churches, and childcare facilities), and

that GB is operating an adult cabaret within 1,500 feet of several such uses. Did the trial court abuse its discretion in failing to enjoin GB's operation in violation of the 1995 SOB Ordinance?

Statement of the Case

On May 23, 2017, Plaintiffs Frontage Road Associates, Inc. and Greenville Bistro, LLC d/b/a Bucks Racks & Ribs (collectively, "GB" or "Plaintiffs") filed a two-count complaint, with exhibits, in the Greenville County Court of Common Pleas. The complaint seeks declaratory and injunctive relief against enforcement of Greenville County's Sexually Oriented Business Ordinance, including the 1995 SOB Ordinance and the 2017 Amendment thereto.

On May 24, Plaintiffs filed their motion for temporary injunction. On June 14, the County filed its answer and counterclaim for injunction, with exhibits. On June 15, the County responded to Plaintiffs' motion. The County also filed its own motion for temporary injunction.

On June 16, 2017, the trial court held a hearing on Plaintiffs' motion only ("2017 hearing").

On July 17, 2017, the trial court entered an order partially granting and partially denying temporary injunctive relief ("2017 Order"), granting relief against the 2017 Amendment only.

On August 15, 2017, the County appealed that limited injunction. The appeal is pending.

On March 8, 2018, the County filed its brief supporting its request for injunction under the 1995 SOB Ordinance only (since the 2017 Amendment had been enjoined two days after the County's motion was initially filed). Plaintiffs responded, and on March 13, 2018, the trial court held a hearing on the County's motion ("2018 hearing").[2] On March 15, 2018, the County filed a supplemental brief stating that the pending appeal concerned only the 2017 Amendment.

On May 17, 2018, the trial court denied the County's motion for temporary injunction. On

[2] Exhibits submitted by the County in the 2017 hearing and 2018 hearing are numbered cumulatively, and each is referred to herein as "Hrg. Ex. [#]."

May 29, 2018, the County filed a motion to alter or amend the 2018 Order. On June 26, the trial court partially granted that motion to correct a factual error, but otherwise denied the motion.

The County timely appealed the May 17 and June 26 orders on July 24, 2018.

Statement of the Facts

A. Relevant Zoning Ordinance Provisions and Facts

Article 4 of the Zoning Ordinance defines "nightclub" as follows:

> Any establishment, whether public or a private club, including cocktail lounges, etc., serving a predominantly adult clientele, and whose primary business is the sale of alcoholic beverages, including beer and wine, for consumption on the premises in conjunction with dancing or live performances. The purchase of food is at the option of the customers and not required by the operator. The sale of alcoholic beverages, beer, and wine must be licensed by the State Alcoholic-Beverage Licensing Board.

(R. p. 319.)

Zoning Ordinance § 6:1 specifies that "[p]rinciple uses shall be allowed within the base zoning districts of this ordinance in accordance with Table 6.1," the Table of Uses. (R. p. 309.)

Section 6:1.4 specifies that a blank cell in the Table "indicates that a use type is not permitted in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this ordinance." (*Id.*) There is a blank cell in the S-1 zoning column for "Nightclub." Thus, nightclubs are prohibited in the S-1 zoning district. (R. p. 315.)

GB operates at 805 Frontage Road (the "Property") in Greenville County. No party disputes that the Property is in the S-1 zoning district. (R. p. 324 ¶ 3; R. p. 60 ¶ 110; R. p. 95 ¶ 110, Reply to Counterclaim (admitting this fact).)

GB serves an exclusively adult clientele and is focused on selling alcohol for on-premises consumption in conjunction with live dancing performances. Like most nightclubs, it requires payment of a cover charge. (R. p. 180, line 20; R. p. 186, line 17; R. p. 200, line 20.) GB also has multiple stages for dancing, including a main stage in the middle of the establishment. (R. p. 210,

lines 6-11.)

GB also has two bars—one on either side of the establishment, (R. p. 210, lines 11-12)—selling alcohol for consumption on the premises. These alcohol sales take place in conjunction with dancing or live performances. Dances take place on stage. (*See, e.g.,* R. p. 181, lines 4-7 ("On the stage they were showing bare breasts and bare buttocks areas. They were pole dancing, gesturing toward the pole. Some people call it twerking, hunching toward it."); R. p. 182, lines 14-17 ("And he'd put his elbows on the stage and she put her vaginal area and her buttocks area, bare buttocks area in his face. And he actually -- and actually touched his face.").) Dances also take place in the "VIP" room. (R. p. 188, lines 8-11; R. p. 196, lines 3-5 ("We'd gone up into the upstairs in what was referred to as a VIP Room. A lap dance lasted the length of one song, approximately three minutes. It was twenty dollars.").

Dances with girls in the "Champagne Room" are the most expensive. (R. p. 202, line 24-p. 203, line 23 ("He [GB employee] walked me upstairs to basically the Champagne Room is what they called it.... They were kind of explaining to us if you get a bottle of champagne for a certain amount, then we get an hour.... When I got there they were trying to get me to -- convince me to spend that eight-fifty [$850]. We essentially said no, didn't have the money at that time. As we walked back downstairs the two females said they wanted to give me a private dance, both of them at the same time, a double private dance."); R. p. 204, line 4-p. 206, line 2 (describing double private dance).)

B. Relevant 1995 SOB Ordinance Provisions and Facts

Section 12(b) of the 1995 SOB Ordinance prohibits a sexually oriented business from operating within 1,500 feet of, *inter alia*, a residential district, a lot devoted primarily to residential use, a church, a child care facility, or a family oriented recreation facility. (R. pp. 297-298.) A "sexually oriented business" includes "an adult arcade, adult bookstore or adult

video store, *adult cabaret*, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center." (R. p. 291, Sec. 2(14) (emphasis added).) An establishment can qualify as an "adult cabaret" in a number of independent ways:

> (3) *Adult cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
>
> (a) Persons who appear in a state of nudity; or
>
> (b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
>
> (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
>
> *Nudity* or a *state of nudity* means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.
>
> *Specified sexual activities* means any of the following:
>
> (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
>
> (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
>
> (c) Masturbation, actual or simulated; or
>
> (d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

(R. pp. 290-292.)[3]

Per subsection (a) of the adult cabaret definition, GB regularly features "[p]ersons who appear in a state of nudity." Dancers at GB engage in nudity two separate ways: (1) by showing

[3] The 2017 Amendment added "or in a state of semi-nudity" to the end of subsection (a) of the "adult cabaret" definition. (R. p. 290.) In its March 8, 2018 brief, and at the March 13, 2018 hearing (R. p. 232, line 17-p. 233, line 3), the County specified that it was not relying on the "semi-nudity" prong from the 2017 Amendment (Ordinance 4869), which is currently on appeal. (R. pp. 112-113 & n. 1.)

their bare buttocks, and (2) by showing their bare breasts. On October 3 and 4, 2017, private investigators observed performers on stage showing their bare breasts with only pasties covering their nipples. Those performers also wore thongs, or bikini bottoms hiked up into their butt cracks, exposing their bare buttocks. (R. p. 181 lines 4-17, p. 187 lines 2-5, p. 195 lines 7-15; R. p. 193 lines 2-5, lines 17-21, p. 195 lines 21-25 (detailing exposure).) On March 7 and 8, 2018, law enforcement officers observed dancers exposing their bare breasts and buttocks on stage. (R. p. 206 lines 14-17, p. 208 lines 8-13; R. p. 206 line 20-p. 207 line 5, p. 211 lines 9-14 (detailing exposure).) The officers also observed dancers exposing their bare breasts and buttocks during lap dances. (R. p. 204 line 12-p. 205 line 1, p. 205 lines 11-13; R. p. 208 lines 18-23, p. 209 lines 2-9.)

Per subsection (b) of the definition, GB regularly features "[l]ive performances which are characterized ... by 'specified sexual activities,'" as defined in the 1995 SOB Ordinance. Specified sexual activities at GB include the "fondling or other erotic touching" of dancers' own, and others, buttocks, genital areas, and female breasts; "simulated ... intercourse, oral copulation, or sodomy;" and "[m]asturbation." On multiple dates, investigators observed dancers on stage who simulated intercourse, touched their breasts and buttocks, and simulated oral sex with patrons by letting patrons put their face in the dancer's crotch. (R. p. 181 lines 8-17, p. 182 lines 14-24, p. 187 lines 8-10, p. 188 line 23-p. 189 line 8.) The dancers simulated intercourse during lap dances by grinding their buttocks or "humping against" the investigator's crotch; dancers also pressed their breasts and buttocks against the investigator's face. (R. p. 182 lines 2-24, p. 187 line 2-p. 188 line 7, p. 195 line 16-p. 196 line 18.) Undercover officers observed the same activity first-hand as well. (*See* R. p. 206 lines 14-17 (describing stage dancing); R. p. 204

lines 12-16, p. 205 line 11-p. 206 line 2, p. 207 lines 11-15, p. 208 lines 18-23, p. 209 lines 2-9 (describing more lap dances).)

GB did not offer any evidence at the March 13, 2018 hearing to counter these observations.

Argument

I. Standard of Review

"The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion." *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 463, 626 S.E.2d 38, 41 (Ct. App. 2005). "An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support." *Ellis v. Davidson*, 358 S.C. 509, 524, 595 S.E.2d 817, 825 (Ct. App. 2004) (citing cases).

A county may obtain an injunction to prevent violations of its ordinances. S.C. Code Ann. § 6-29-950; § 4-9-30(14). To obtain the injunction, a county need not satisfy the general standard for temporary injunctive relief, but must show only "(1) that it has an ordinance covering the situation; and (2) that there is a violation of that ordinance." *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 905 (Ct. App. 2002) (quoting *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000)).

II. The County is entitled to an injunction under the Zoning Ordinance.

A. GB is illegally operating a nightclub in an S-1 zoning district.

The undisputed evidence shows that GB is illegally operating a nightclub in the S-1 district, and that the trial court should have enjoined its illegal operation. First, GB is an adults-only club selling alcohol in conjunction with dancing and live performances. As detailed in Section A of the Statement of Facts above, GB has all of the indicia of a nightclub, including cover charges, a bar (actually, two) serving alcohol, and live dancing to music. Specifically, erotic dancers are the

"draw" of the establishment, and are featured on multiple stages in the club. Dancers at the club also engage in private performances at tables, in the "VIP Room," and (with the purchase of an overpriced bottle of champagne) in the "Champagne Room."

Second, GB's operation of a nightclub at 805 Frontage Road is plainly illegal, as that location is in an S-1 zoning district, where nightclubs are prohibited under the Zoning Ordinance. (R. p. 309, Zoning Ordinance § 6:1.4 (blank cell indicates use is not allowed in the district), p. 315, Table 6.1, showing blank cell for nightclub in S-1 zoning district).)

B. The trial court abused its discretion in failing to address the County's request for relief under the Zoning Ordinance.

The County proved "that it has an ordinance covering the situation" of a nightclub's operation in an S-1 district, and "that there is a violation of that ordinance." *Simpkins*, 348 S.C. at 669, 560 S.E.2d at 905. The County was thus entitled to an injunction, and the trial court abused its discretion in failing to grant that requested relief.

The trial court erred as a matter of law in failing to address the County's stand-alone claim for injunctive relief under the Zoning Ordinance. (R. pp. 66-67; R. pp. 114-115; R. p. 179 lines 13-14 (arguing that the County is "entitled to an injunction under the Zoning Ordinance, which prohibits a nightclub in the S-1 District").) GB argues (and the trial court concluded) that GB is a restaurant. But neither GB nor the trial court provided any support for the secondary proposition that a restaurant use allows for live entertainment—whether as an accessory use or otherwise. It does not. In fact, GB has long known that live entertainment was prohibited at the site. (R. p. 328, May 12, 2017 Zoning Violation Detail (stating that "the certificate of occupancy is for a restaurant and does not have live entertainment.... Cease all use for live entertainment").) In any event, because GB's operation meets the definition of "nightclub," it is separately prohibited under the Zoning Ordinance from operating in the S-1 zoning district.

The 2018 Order also cites an early (June 2, 2017) temporary restraining order precluding the County from "issuing citations based on nonconformity with zoning," (R. p. 4), but that order expired when the trial court ruled on GB's motion for temporary injunction in July 2017. Rule 65(b), SCRCP. Moreover, the July 2017 Order, although enjoining the July 2017 Amendment (Ordinance 4869), did not enjoin the Zoning Ordinance or any other ordinance. To the contrary, that order specifically required compliance with all ordinances (including the Zoning Ordinance) other than Ordinance 4869.

Finally, since the July 2017 Order did not address the Zoning Ordinance at all, the existence of that appeal does not preclude the County from obtaining an injunction under the Zoning Ordinance against GB's illegal operation of a nightclub in the S-1 district. (R. p. 320, Zoning Ordinance § 13:3 (noting that the County may "seek injunctive relief or any other appropriate action in courts of competent jurisdiction to enforce the provisions" of the Zoning Ordinance).)

For all of these reasons, the trial court erred as a matter of law, and thus abused its discretion in refusing to enjoin GB's violation of the Greenville County Zoning Ordinance.

III. The County is entitled to an injunction under the 1995 SOB Ordinance.

A. GB is illegally operating an adult cabaret within 1,500 feet of residences, a church, and a child care facility.

The County is also entitled to an injunction under the 1995 SOB Ordinance because that ordinance governs the location of sexually oriented businesses and because GB is operating an adult cabaret in violation of those standards. Since 1995, the County has regulated the location of sexually oriented businesses by dispersing them with a 1,500-foot setback requirement from, among other things, residential districts, churches, and child care facilities. (R. p. 297, 1995 SOB Ord. Sec. 12(b)); *Greenville County v. Kenwood Enters., Inc.*, 353 S.C. 157, 171, 577 S.E.2d 428, 435 (2003) (upholding permanent injunction against adult cabaret operating at 805 Frontage

Road). GB operates at 805 Frontage Road, which is within 1,500 feet of a church, a residential district, and a licensed child care facility. (R. p. 324 ¶ 4; R. p. 326, Map.)

In addition, GB is an adult cabaret under the 1995 SOB Ordinance for two independent reasons. First, under the definition of "nudity" and subsection (a) of the adult cabaret definition, GB regularly features "[p]ersons who appear in a state of nudity" by showing: (1) their bare buttocks, and (2) their bare breasts. As detailed in Section B of the Statement of Fact, on visits in 2017 and 2018, investigators repeatedly saw dancers throughout GB showing their bare breasts with only pasties on their nipples and showing their bare buttocks, with thongs or bikini bottoms pulled up into their butt cracks. Dancers routinely appeared nude in this manner on stage and during lap dances. Second, GB is an adult cabaret under subsection (b) of the definition because GB regularly features "[l]ive performances which are characterized ... by 'specified sexual activities,'" as defined in the 1995 SOB Ordinance. These activities include the "fondling or other erotic touching" of dancers' own, and others, buttocks, genital areas, and female breasts; "simulated ... intercourse, oral copulation, or sodomy;" and "[m]asturbation." On multiple visits to GB in 2017 and 2018, investigators saw dancers simulating intercourse on stage, erotically touching their breasts and buttocks, and simulating oral sex with patrons. Dancers also simulated intercourse while grinding their buttocks or "humping against" patrons' crotches, and they pressed their breasts and buttocks against patrons' faces during lap dances.

As noted previously, GB did not offer any evidence to contest these observations. The evidence that GB is operating as an adult cabaret under the 1995 SOB Ordinance is undisputed.

Because GB is operating an adult cabaret, as defined in the 1995 SOB Ordinance, in violation of the 1,500-foot setback requirement, the County is entitled to an injunction. The trial court erred when it refused to grant relief to prevent GB's ongoing violations of law.

B. The appeal of the 2017 injunction does not preclude relief against ongoing violations of the 1995 SOB Ordinance.

Despite the overwhelming evidence that GB is violating the 1995 SOB Ordinance, the trial court refused to grant the County's motion for temporary injunction. The court reasoned that relief for the County would contravene relief granted to GB in the 2017 Order and would "interfere with the jurisdiction" of this Court over the appeal of the 2017 Order. (*See* R. pp. 8-10, ¶¶ 23-32.) But the trial court misapplied Rule 205, SCACR, and misunderstood *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012).[4] In denying the County's motion for temporary injunction, the trial court committed a clear error of law.

Rule 205 directs that the appellate court shall have exclusive jurisdiction over the appeal after a notice of appeal is served. But Rule 205 also provides that "[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with **matters not affected by the appeal.**" (emphasis added.) As explained in *Tillman*, "the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter affected by the appeal' under Rules 205 and 241(a)." 398 S.C. at 255, 728 S.E.2d at 51.

Neither the County's request for relief under the Zoning Ordinance nor its request for relief under the 1995 SOB Ordinance is a matter affected by the appeal of the 2017 Order. The 2017 Order enjoined only enforcement of the 2017 Amendment (Ordinance 4869), which merely added an *additional* way that a business could qualify for regulation as an adult cabaret. The County's notice of appeal specifically covered only "that portion of this trial court's July 17, 2017 Order for Partial Grant and Partial Denial of Temporary Injunctive Relief that temporarily

[4] The trial court also errantly relied on Rule 241(c), SCACR, which concerns supersedeas and automatic stays. But Rule 241(c) is not relevant here because no motion was made under that rule in the trial court. Moreover, "the existence or nonexistence of a stay under Rule 241 does not control the [lower] court's power to proceed with the action and address matters not affected by the appeal." *Tillman*, 398 S.C. at 255, 728 S.E.2d at 51.

enjoins the enforcement of Greenville County **Ordinance 4869**." (R. p. 100 (bold added).) The only matter that was on appeal when the trial court entered the 2018 Order was the validity of the 2017 Amendment (Ordinance 4869). The only thing that the appellate court has the jurisdiction, and the occasion, to decide in that appeal is whether the temporary injunction against Ordinance 4869 should be affirmed or reversed. The August 15, 2017 notice of appeal did *not* involve the Zoning Ordinance. Nor did it involve the 1995 SOB Ordinance (Ordinance 2673). Thus, there is "no action the appellate courts could take resolving [that] appeal that would affect the" the County's right to relief under either the Zoning Ordinance or the 1995 SOB Ordinance. *Tillman*, 398 S.C. at 256, 728 S.E.2d at 51.

The trial court's error here mirrors the trial court's error in *Tillman*. In *Tillman*, the lower court mistakenly concluded that it lacked the power to rule on a petition to change visitation rights due to the appeal of a child custody order that was pending between the parents. The order on appeal changed custody from the mother to the father, and established the mother's visitation rights. *Tillman*, 398 S.C. at 256, 728 S.E.2d at 51. The mother appealed "only the custody portion of the order." *Id.* Thereafter, the father petitioned for a suspension of the mother's visitation rights—he did not seek relitigation of any factual finding in the order on appeal. *Id.* In reversing the trial court, this Court explained that "[t]he question the court should have addressed is whether the issue raised in the petition was a matter affected by the appeal. We find that it was not, and that the [lower] court should have ruled on the petition." *Tillman*, 398 S.C. at 256, 728 S.E.2d at 51.

Here, the trial court held that the matter before it in 2018 was "no different from the issues which are currently pending on appeal." (R. p. 11 ¶ 34.) But that is wrong: only the 2017 Amendment was on appeal. As noted above, the County's notice of appeal involved only "that

portion" of the 2017 Order that enjoined the 2017 Amendment (Ordinance 4869). (R. p. 100.) This Court's ruling in the separate appeal concerning Ordinance 4869 will not affect whether the County is entitled to an injunction under its Zoning Ordinance to stop the operation of GB's nightclub in the S-1 district.

Likewise, this Court's ruling in the separate appeal will not affect whether the County is entitled to an injunction under the terms of its 1995 SOB Ordinance. The 1995 SOB Ordinance defined an "adult cabaret" as a place that regularly features performances involving "nudity" and "specified sexual activities." The evidence detailed above shows that GB features both. (*See* R. p. 113 (explaining that GB is an "adult cabaret" because it regularly features "persons who appear in a state of nudity" by showing their breasts and buttocks, and performances characterized by "specified sexual activities," including "dancers erotically touching their own, and others, buttocks, breasts, and genital areas" on stage and during "lap dances").) The 2017 Amendment (Ordinance 4869) simply added a "semi-nudity" prong to the "adult cabaret" definition. The validity of that prong is the only matter on appeal. That ongoing appeal will thus have no effect on the fact that GB qualifies as an adult cabaret by virtue of featuring "nudity" and "specified sexual activities" under separate, disjunctive prongs of the "adult cabaret" definition. Nor will it change the fact that GB is too close to residences, a church, and a child care facility, and is thus prohibited under Section 12(b) of the 1995 SOB Ordinance.

Nothing in Rule 205 precluded the trial court from granting an injunction to stop GB's ongoing violations of the Zoning Ordinance and the 1995 SOB Ordinance's location restriction.

Second, the trial court (Gravely, J.) also held in the 2018 Order that granting the County relief could "possibly" contravene the relief already granted (by Stilwell, J.) to GB in the 2017 Order. (R. p. 10 ¶ 32.) But that, too, is error. In fact, granting the County's motion for temporary

relief under the Zoning Ordinance and the 1995 SOB Ordinance is entirely *consistent with* that order. The 2017 Order did *not* allow GB to continue to operate regardless of what GB is doing at the property. On the contrary, it enjoined only the 2017 Amendment (Ordinance 4869)—while specifically requiring compliance with all ordinances (including the Zoning Ordinance and the 1995 SOB Ordinance) that preexisted that 2017 Amendment. There was no basis to stay or abate a ruling on the County's request for an injunction to stop GB's violations of the County's Zoning Ordinance and 1995 SOB Ordinance.[5]

Conclusion

For the reasons stated above, this Court should reverse the trial court's order and instruct the court to enter a temporary injunction enjoining GB from: (1) operating a nightclub in an S-1 district in violation of the Zoning Ordinance, and (2) operating an adult cabaret in violation of the location restrictions in section 12(b) of the 1995 SOB Ordinance.

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[5] The trial court found that GB was operating a restaurant. (R. p. 4, ¶¶ 2-3.) But this is immaterial. A restaurant can also be an adult cabaret, and become subject to the 1995 SOB Ordinance's requirements. (R. p. 290 ("*Adult cabaret* means a nightclub, bar, **restaurant**, or similar commercial establishment which regularly features ....") (emphasis added).)

Respectfully submitted,

DEVLIN & PARKINSON, P.A.

John R. Devlin, Jr., S.C. Bar No. 1667
P.O. Box 10387
Greenville, SC 29603
(864) 242-4050
(864) 242-4277-Facsimile
John.devlin@devlinparkinson.com

Scott D. Bergthold, Admitted Pro Hac Vice
Law Office of Scott D. Bergthold, P.L.L.C.
2290 Ogletree Ave., Suite 106
Chattanooga, TN 37421
(423) 899-3025
(423) 899-3029-Facsimile
sbergthold@sdblawfirm.com

Attorneys for Appellants

Date: December 20, 2018
Greenville, SC

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

DEVLIN & PARKINSON, P.A.

John R. Devlin, Jr., S.C. Bar No. 1667
P.O. Box 10387
Greenville, SC 29603
(864) 242-4050 - Office
(864) 242-4277-Facsimile
john.devlin@devlinparkinson.com

Scott D. Bergthold, Admitted *Pro Hac Vice*
Law Office of Scott D. Bergthold, P.L.L.C.
2290 Ogletree Ave., Suite 106
Chattanooga, TN 37421
(423) 899-3025 - Office
(423) 899-3029 - Facsimile
sbergthold@sdblawfirm.com

Attorneys for Appellants

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Greenville, SC