

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2019-002031

Richard Ralph and Eugenia Ralph..... Respondents,

v.

Paul Dennis McLaughlin and Susan Rode McLaughlin..... Petitioners.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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S.C. SUPREME COURT

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COUNTER-STATEMENT OF THE CASE

This is an appeal from various erroneous decisions made by the trial court in the course of a jury trial over an easement. The Ralphs brought a cause of action for trespass against the McLaughlins, seeking actual and punitive damages for the damages caused by the McLaughlins' destruction of a drainage pipe easement and "no-build area" restriction that burdened the McLaughlins' property and benefitted that of the Ralphs. The trial court granted the McLaughlins' motion for a directed verdict as to punitive damages, and it denied the Ralphs' motion for directed verdict as to the issues of trespass and abandonment. Although there had been a previous grant of summary judgment as to the question of the McLaughlins' ability to rely on representations by the Seabrook Island Property Owners' Association ("SIPOA") when the McLaughlins destroyed the easement, the trial court refused to be bound by the facts and law in that order.

After the trial resulted in an award to the Ralphs of \$1,000 in damages, they filed a motion for a new trial absolute, or, in the alternative, a new trial *nisi additur*, or, in the alternative, a new trial as to damages. Holding, *inter alia*, that it had properly granted the McLaughlins' motion for directed verdict on punitive damages and properly denied the Ralphs' motion for directed verdict on liability, the trial court denied the motions.

The Court of Appeals properly reversed the trial court's errors and remanded the case for a new trial on compensatory and punitive damages. The Ralphs incorporate the Court of Appeals' statement of the facts herein. (Opinion No. 5681, pp. 2-9).

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ARGUMENT

I. Petitioners have failed to identify any basis for review of the Court of Appeals' decision.

Certiorari review is the exception, not the rule; it "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR; *see also, State v. Lyles*, 381 S.C. 442, 443-44, 673 S.E.2d 811, 812 (2009) (stressing that a writ of certiorari is available "only where special reasons justify the exercise of that power."). The Appellate Court Rules identify limited circumstances which might merit this Court's exercise of its discretion, including where novel questions of law are at issue, or where there is a dissenting opinion to the Court of Appeals' decision, or where there is a conflict between a decision by the Supreme Court and the Court of Appeals' opinion. Rule 242(b)(1-3), SCACR.

In this case, there are no special or important reasons warranting this Court's review of the Court of Appeals' well-reasoned opinion, which correctly applies long-standing South Carolina law to the facts. The Court of Appeals' decision in this case is unanimous; no new or novel questions of law were before that Court, nor distinguished in its opinion; the McLaughlins do not identify any conflict between the Court's decision and any prior decision of the Supreme Court. Although the McLaughlins petitioned for rehearing and suggested rehearing *en banc*, both the petition and suggestion were rejected by the Court of Appeals. In short, the McLaughlins' *Petition for a Writ of Certiorari* is a diatribe of discontent, which fails to identify any compelling reason for discretionary review by this Court. Therefore, this Court should deny the McLaughlins' *Petition*, and

the matter should be remanded to the trial court in accordance with the Court of Appeals' decision.

II. The Court of Appeals' unanimous decision properly reversed the trial court.

The Court of Appeals correctly remanded this case to the trial court for a new trial on compensatory and punitive damages. This disposition was based on the Court of Appeals' determination that, properly, no question of fact existed for the jury as to liability, nor as to the question of easement abandonment—holdings for which the McLaughlins apparently do not seek certiorari review. Further, the Court of Appeals correctly found that the trial court applied the wrong legal standard in directing a verdict to the McLaughlins on punitive damages. Finally, the Court of Appeals did not err, and this Court's review is not necessary, as to the Court of Appeals' application of the law of the case doctrine to bar the McLaughlins from making arguments to the trial court directly contrary to the findings in a previous order in the same case.

A. The trial court applied the wrong legal standard in evaluating the McLaughlins' motion for directed verdict on punitive damages.

The Petitioners' first argument for certiorari is all about the facts. The issue before the Court of Appeals, however, was not one of fact. Rather, it was a question of whether the trial court applied the correct *standard* to the disputed facts. The Court of Appeals properly found that it did not.

In ruling on the McLaughlins' motion for a directed verdict as to punitive damages, the trial court erroneously weighed the evidence. This mistake is readily apparent in the block quote that Petitioners cite on page 5 of their *Petition for a Writ of Certiorari*, where the trial court stated: "I, again, don't think this is a case in which there

has been a rise to clear and convincing evidence that he acted intentionally . . . ;” the trial court further stressed that it did not “think [the McLaughlins were] acting malevolently, certainly not to the level of clear and convincing” (Appendix p. 805, line 23 - p. 806; p. 799, lines 4-6) (emphasis added). The Court of Appeals correctly found that, in so ruling, “the circuit court invaded the jury’s province by improperly weighing the evidence.” Op. 5681, at p. 18, citing *Fairchild v. S.C. Dep’t of Transp.*, 398 S.C. 90, 99, 727 S.E.2d 407, 411 (2012) (“It is not the duty of the [circuit] court to weigh the testimony in ruling on a motion for a directed verdict.”).

The proper standard, applied correctly by the Court of Appeals, is that when it rules “on a directed verdict motion as to punitive damages, the circuit court must view the evidence and the inferences that can reasonably be drawn therefrom in the light most favorable to the nonmoving party.” *Hollis v. Stonington Dev. LLC*, 394 S.C. 383, 393-394, 714 S.E.2d 904, 909-910 (Ct. App. 2011), quoting *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 621 S.E.2d 363 (Ct. App. 2005); see also *Fairchild*, 398 S.C. at 99, 727 S.E.2d at 411 (“In reviewing a ruling on a motion for a directed verdict, this Court must view the evidence and all reasonable inferences from the evidence in the light most favorable to the party opposing the motion. . . . A case should be submitted to the jury when the evidence is susceptible of more than one reasonable inference.”) (internal citations omitted). “The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant’s behavior was reckless, willful, or wanton.” *Id.* The trial court failed to apply this standard, in a ruling controlled by error of law.

The Court of Appeals, examining the Record and the trial transcript, properly found that a jury question existed on punitive damages, because more than one reasonable inference could be drawn as to whether the McLaughlins acted recklessly in destroying the drainage pipe and no-build area easements. *See, e.g., Rhodes v. Lawrence*, 279 S.C. 96, 97-98, 302 S.E.2d 343, 344 (1983) (remanding for a new trial after determining the circuit court erred in granting a directed verdict on punitive damages). This determination by the Court of Appeals did not in any way invade the jury's purview, as the McLaughlins strangely contend in their *Petition*, because the question of punitive damages was not ever given to the jury.

The Petitioners have not identified any special or important reason for this Court to review the Court of Appeals' determination on this legal issue.

B. The Court of Appeals correctly found that the McLaughlins' inability to rely on any representation by SIPOA was the law of the case.

Petitioners' characterization of the Court of Appeals' decision on the issue of the Law of the Case Doctrine is misleading. The Court of Appeals did not, as Petitioners suggest, find that Judge Cooper's ruling established liability;¹ instead, the Court of Appeals correctly found that Judge Cooper's ruling finally resolved, as the facts and law of the case, that the McLaughlins had no right to rely on the SIPOA when they made their decision to destroy the easements at issue.

It is a fundamental rule of law that an un-appealed order is the law of the case. *Charleston Lumber Co. v. Miller Hous. Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000), *citing ML-*

¹ Entirely apart from Judge Cooper's order, the Court of Appeals found that liability was established as a matter of law, as further set forth in Section III, below.

Lee Acquisition Fund, L.P. v. Deloitte & Touche, 489 S.E.2d 470, 327 S.C. 238 (1997) (“[An] unappealed ruling is the law of the case.”), citing *In re: Morrison*, 468 S.E.2d 651, 321 S.C. 370 (1996). This is because the failure to challenge a ruling is considered an abandonment of the issue, which precludes subsequent reconsideration of settled matters. *Biales v. Young*, 315 S.C. 166, 432 A.E.2d 482 (1993); see also *Anderson v. Short*, 323 S.C. 522, 476 S.E.2d 475 (1996) (stating that where a decision is based on more than one ground the appellate court will affirm unless the appellant appeals all grounds, because the unappealed ground will become the law of the case). The law of the case applies both to those issues explicitly decided, as well as to those issues which were necessarily decided in the prior ruling. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 492 S.E.2d 62 (1997). The law of the case doctrine is different from the doctrine of res judicata, in that the law of the case doctrine applies only to subsequent proceedings in the same litigation, whereas the latter acts to prevent re-litigation of specific claims actually decided in a prior suit. See *Lifshultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 513 S.E.2d 96 (1999); see also *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (“Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were . . . not raised on appeal, but should have been”); see also *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 572, 776 S.E.2d 397, 403 (Ct. App. 2015) (“[A] decision on an issue of law made at one stage of a case becomes binding precedent to be followed in subsequent stages of the same litigation.”).

This rule makes sense. A legal action simply cannot have one legal finding early in the case (with the predicate factual findings) and then permit a contradictory finding

later in the case. With each final trial court ruling, the parties are given direction by the court and must proceed accordingly. If a party believes the court is in error, then that party has the responsibility of preserving and pursuing the issue by appealing the decision.

In their arguments before the trial court, the McLaughlins persistently contended that their liability to the Ralphs should be discounted because they had relied on SIPOA when they destroyed the easements. According to the McLaughlins at trial, their justified reliance on SIPOA negated any financial responsibility to the Ralphs, and it invalidated any argument as to punitive damages. The Court of Appeals correctly found that these arguments were inappropriate because they were directly contrary to Judge Cooper's previous ruling in the same case:

When he issued his Order granting summary judgment as to the McLaughlins' reliance claims against the SIPOA, Judge Cooper made detailed findings of disputed fact and law, that were applicable to and binding on both the Ralphs and the McLaughlins,² including that:

As a practical matter, there is no evidence to show that SIPOA has ever made any promises to the McLaughlins. Accordingly, as a matter of law,

there is simply no genuine issue of material fact that the McLaughlins reasonably relied on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by Plaintiffs.

In fact, the record is completely clear that there was absolutely no "unambiguous representation" from SIPOA that the McLaughlins' only responsibility regarding the pipe was that it had to pay to remove the pipe.

² Within the same Order, Judge Cooper ruled on the McLaughlins' and SIPOA's statute of limitations argument against the Ralphs. (Appendix pp. 10-11).

Rather, the entire history of the interactions between SIPOA indicate the opposite—that the McLaughlins had to assume all responsibility for the disposition of the pipe. Indeed, by their own admission, (1) the McLaughlins blamed SIPOA for leaving them in “limbo” in 2008 prior to their removal of the pipe, (2) rejected SIPOA’s proposals to resolve the matter prior to the McLaughlins unilateral decision to remove the pipe, and (3) were defendants in a lawsuit filed by the SIPOA to stop them from removing the pipe. For these reasons, the McLaughlins simply cannot prevail on their third-party claim against SIPOA as a matter of law.

(Appendix pp. 5-12) (emphasis added).

These findings of fact and law were final, granting summary judgment to the SIPOA, and they could have been—but were not—appealed by the McLaughlins. Nonetheless, the trial court improperly allowed the McLaughlins to successfully argue the very opposite of Judge Cooper’s rulings, in both their directed verdict motions³ and to the jury.⁴

³ In arguing for a directed verdict as to the issue of punitive damages, the McLaughlins contended:

Your Honor, we also don’t think the standard for punitive damages has been reached. You heard Mr. McLaughlin testify that he was relying on the FOA when they built their house. There was no wrongdoing of which he was conscious that has been proven by clear and convincing evidence as required for punitive damages, so we would ask Your Honor to strike the punitive damages for the lack of proof and the lack of ability to comply with the case law regarding punitive damages.

(A. p. 777, line 23-p. 778, line 6).

⁴ See, e.g., the McLaughlins’ opening argument: “nothing gets built on Seabrook Island or Kiawah Island and certain places like that unless you have the approval of your property owner’s association . . . and eventually . . . their plans were approved to build their home where it’s currently situated in the former no-build area . . . and I think that’s important for the testimony to bear out, that [the McLaughlins] went through a lot of time and effort with the property owners association to build in this no-build area with the abandoned easement.” (A. p. 544, line 22-p.545, line 11).

Because the McLaughlins never appealed Judge Cooper's findings of fact and determinations of law, the Court of Appeals properly held that his order became the law of the case and should have been binding in the subsequent trial of the same case. *ML- Lee Acquisition Fund, L.P.*, 327 S.C. at 241, 489 S.E.2d at 472; *see also Ashby v. WeCare Distributors, Inc.*, 289 S.C. 526, 528, 347 S.E.2d 123, 125 (Ct. App. 1986) ("Where no exception is taken to findings of fact or conclusions of law, they become the law of the case."). Because the Court of Appeals' decision on this issue is in complete accordance with precedent, there is no compelling reason for this Court to grant the McLaughlins' request for certiorari review.

III. There are independent sustaining grounds on which to uphold the Court of Appeals decision, making certiorari review unwarranted.

The Court of Appeals reversed the trial court's decision on the Ralphs' directed verdict motion as to liability, as well as on their motion for new trial, finding that no question of fact existed as to whether the McLaughlins' destruction of the easements constituted trespass as a matter of law. In so doing, the Court of Appeals applied long-standing precedent to find that the Ralphs had a property interest in the drainage easements, because an owner who takes title to property with reference to a plat acquires an interest in the easements that appear on that plat. Op. 5681 at p. 20, *citing Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 924 (1965) ("[W]here a deed

See also, e.g., the McLaughlins' closing argument, which reiterated: "The McLaughlins, of course, relied on the representation of their sellers and the representation of the Seabrook Island Property Owners Association that they could build." (A. p. 904, lines 21-24); "those letters confirm what the McLaughlins relied on, that the easement had been abandoned, they could remove the pipe, they could build in the no-build area." (*Id.* at p. 906, line 5); "[The McLaughlins] relied exclusively on the POA to get their house built." (*Id.* at 909, lines 12-14).

describes land as is shown on a certain plat, such plat becomes a part of the deed.”); *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975) (“[T]he purchaser of lots with reference to the plat of the subdivision acquire[s] every easement, privilege[,] and advantage shown upon said plat”); *see also Corbin v. Cherokee Realty Co.*, 229 S.C. 16, 24, 91 S.E.2d 542, 546 (1956) (“Such purchasers acquire[] every easement, privilege[,] and advantage [that] the plat represent[s] as belonging to them.”).

Thus, the Court of Appeals properly held that the Ralphs had a property interest in the drainage easement and no-build area that appeared on the plats by which both the Ralphs and the McLaughlins took title. Further, the Court of Appeals correctly followed South Carolina law to hold that the SIFOA was powerless to unilaterally abandon the Ralphs’ interest in those easements, which both benefitted and burdened theirs and the McLaughlins’ property. *Op.* 5681 at pp. 20-22; *Bland*, 265 S.C. at 106, 217 S.E.2d at 20 (“Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law.”); *also citing Corbin*, 229 S.C. at 24, 91 S.E.2d at 546 (“The Florenza Company could not without the consent of [the owner] change the location or width of [the easement].”). Finally, the Court of Appeals correctly found that the Forsberg plat—which appeared only in the McLaughlins’ chain of title—did not in any way affect the Ralphs’ property interest in the easement. *Id.*, *citing Bland*, 265 S.C. at 107, 217 S.E.2d at 20 (“The fact that a new plat of the property in question was made did not destroy the easement created on the [original] plat.”). Further, the McLaughlins admitted that they dug up the drainage pipe, destroyed the easement, and

built their home in the restricted no-build area, without permission or license from the Ralphs. Op. 5681 at p. 19; *see also* A. p. 747, line 18-p. 748, line 10; A. p. 868, lines 20-24.

Because there was no question of fact as to trespass and abandonment, the Court of Appeals properly found that the trial court's decisions on the Ralphs' motion for directed verdict and motion for a new trial were controlled by errors of law; therefore, reversal was appropriate. Petitioners have not challenged this determination by the Court of Appeals, and it is independent grounds for this Court's affirmance of the decision.

CONCLUSION

For the reasons set forth above, and because the McLaughlins have not identified any special or important reason for this Court to review the Court of Appeals' decision, the Ralphs respectfully request that this Court deny the McLaughlins' *Petition for a Writ of Certiorari*.

Respectfully submitted,

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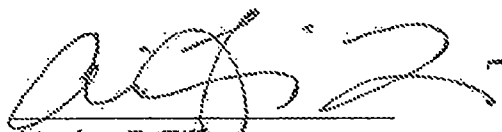
v.

Paul Dennis McLaughlin and Susan Rode McLaughlin, Petitioners.

PROOF OF SERVICE

I hereby certify that I served the within *Return to Petition for a Writ of Certiorari* on counsel for Petitioners by depositing a copy of it in the United States Mail, postage prepaid, on January 6th, 2020, addressed to their attorney of record:

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