

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE STEVEN H. JOHN
CIRCUIT COURT JUDGE

Case No. 2016-CP-22-00961
Appellate Case No. 2019-001446

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SC Court of Appeals

The Gulfstream Café, Inc., Respondent,

v.

Palmetto Industrial Development, LLC, and J. Mark Lawhon, Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court properly found Appellants in contempt of the court's permanent injunction order, where the evidence shows beyond a reasonable doubt that Appellants intentionally violated that order.

INTRODUCTION

Appellants' Palmetto Industrial Development, LLC and J. Mark Lawhon (collectively, "Appellants") repeated contemptuous conduct merits serious sanctions. Appellants have a lengthy pattern of disregarding the circuit court's orders in this litigation. In 2017, they willfully violated a preliminary injunction entered by the circuit court, which blocked Appellants from interfering with Respondent The Gulfstream Café, Inc.'s ("Gulfstream") parking easement, and they were properly held in contempt for that conduct. Then, when the circuit court entered a permanent injunction in 2018 again barring Appellants from interfering with Gulfstream's easement rights, Appellants showed their true colors. Almost immediately following entry of that injunction, Appellants repeatedly and intentionally blocked access to the Gulfstream restaurant's delivery gate in a deliberate effort to harm the operation of the restaurant. The circuit court again entered a contempt order against Appellants (the "Contempt Order"), and that order forms the basis of the present appeal. In entering the Contempt Order, the circuit court properly considered evidence of Appellants' conduct, weighed the credibility of the witnesses and, found that Appellants willfully disregarded its permanent injunction.

The present appeal is a desperate effort by Appellants to avoid being held in contempt for a second time. First, Appellants contest the scope and language of the permanent injunction, even though they declined to pursue an appeal of that injunction order when it was entered. The circuit court's injunction was entered in June 2018, and, while Appellants initially appealed that order, they subsequently dismissed the appeal. The permanent injunction therefore is law of the case and cannot now be challenged. Second, Appellants wrongly contend that the evidence supporting the

Contempt Order is legally insufficient. The Contempt Order is based on the circuit court's proper evaluation of the evidence introduced by both parties, with the circuit court's factual findings supporting its Contempt Order entitled to great deference. Appellants wholly fail to identify any grounds for reversing that order. The remainder of Appellants' brief is devoted to baseless arguments identifying supposedly technical defects in the circuit court's Contempt Order. As set forth herein, the circuit court committed no error in denying Appellants' motion to alter or amend the Contempt Order pursuant to Rule 59(e). Likewise, the Contempt Order contains sufficient detail and fully complies with South Carolina law.

STATEMENT OF THE CASE

This case is part of a long-running dispute over a permanent easement granted in favor of Gulfstream by Appellant Palmetto's predecessor in interest. Appellants sought to undermine and repudiate that easement, and Gulfstream brought the instant lawsuit in 2016 to protect its easement rights. During the course of the case, the circuit court entered a preliminary injunction preventing Appellants from interfering with Gulfstream's easement. (August 25, 2017 Amended Order Granting Temporary Injunction.) Appellants disregarded this order, and the circuit court held Appellants in contempt for, among other things, calling the Georgetown County Sheriff when painters and window washers entered upon the easement area in order to perform maintenance on Gulfstream's building. (September 28, 2017 Order on Motion for Contempt.) Appellants declined to contest that first Contempt Order.

The case proceeded to trial, where the jury found in Gulfstream's favor on its claim for interference with its easement. (June 12, 2018 Jury Verdict.) Following the verdict, the circuit court entered a permanent injunction stating in pertinent part that "Defendants are enjoined from preventing the Plaintiff from enjoying the right granted to it in the recorded nonexclusive joint

easement.”¹ (June 12, 2018 Permanent Injunction.) Appellants filed a motion to alter or amend this injunction claiming that the injunction improperly enlarged Gulfstream’s easement rights, and the circuit court denied that motion. (November 14, 2018 Order denying Defendants’ Motion to Alter or Amend Permanent Injunction.) Appellants then filed a notice of appeal regarding the permanent injunction order but ultimately dismissed that appeal. (February 4, 2019 Order dismissing Defendants’ Appeal.)

Shortly after the permanent injunction was entered, Gulfstream filed a motion for contempt based on Appellants’ repeated and willful violations of the permanent injunction, including Appellants’ act of using a vehicle to block access to Gulfstream’s delivery gate. (July 20, 2018 Motion for Contempt.) The parties briefed the issue and the circuit court heard argument on November 14, 2018. Based on the evidence and arguments submitted, the Court entered the Contempt Order. (November 14, 2018 Order granting Motion for Contempt.) Appellants filed a motion to alter or amend the Contempt Order on November 21, 2018 (November 21, 2018 Motion to Alter or Amend Contempt Order), which was denied by the circuit court. (August 7, 2019 Order denying Motion to Alter or Amend Contempt Order.) This appeal followed.

STATEMENT OF THE FACTS

This appeal is a small portion of the dispute between Gulfstream and Appellants regarding Gulfstream’s permanent easement, which provides Gulfstream with the full and free right to access the parking lot adjacent to its restaurant. (Compl. Ex. A.) At its core, the dispute relates to Appellants’ efforts to undermine Gulfstream’s easement rights, including by physically occupying the easement area and by constructing a gigantic restaurant adjacent to the easement, whose

¹ The Permanent Injunction was revised to clarify language relating to the permissible location of a proposed new building by Appellants. That amended Injunction contains identical language barring Appellants from interfering with Gulfstream’s easement rights. (July 27, 2018 Order granting Gulfstream’s Motion to Alter or Amend Permanent Injunction.)

operation will greatly overtax the parking capacity of the easement. (See Complaint at ¶ 29.) This dispute spans more than three years and at least four separate lawsuits. Gulfstream provided a thorough recitation of the facts in the initial appellate brief it filed in a companion case, and Gulfstream incorporates by reference the discussion contained in that brief.²

The present appeal comes down to a simple issue—Appellants’ willful violation of the circuit court’s permanent injunction. The circuit court entered the permanent injunction following a jury trial on, among other things, Gulfstream’s claim for interference with its permanent easement. The evidence in the record detailed several examples of interference by Appellants, including but not limited to physically blocking access to the parking easement using a construct fence and construction materials, as well as threatening Gulfstream employees.³ (November 30, 2016 Affidavit of Jef Kirk at ¶¶ 4-6, 10, 23, submitted in support of December 2, 2016 Motion for Temporary Injunction.⁴) The record also reflected that, at the beginning of the dispute, Appellant Lawhon blocked Gulfstream’s delivery gate with his vehicle and refused to move that vehicle. (November 30, 2016 Affidavit of Jef Kirk at ¶¶ 11-14, submitted in support of December 2, 2016 Motion for Temporary Injunction.)

Mere days after the circuit court entered its permanent injunction, Appellants embarked upon a new campaign of interference. Appellants’ agent, Chris Lawhon, parked a golf cart on the easement area directly in front of the Gulfstream delivery gate. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) Chris Lawhon refused to move that golf cart despite several requests from Gulfstream employees, and Chris Lawhon kept the golf cart in place for multiple

² The Gulfstream Café, Inc. v. Palmetto Industrial Development, LLC, Appellate Case No. 2019-000885, Initial Brief of Appellant, filed September 25, 2019.

³ Appellants’ first contempt citation was also part of the record at the time the circuit court entered its permanent injunction.

⁴ Mr. Kirk’s testified at trial consistently with the contents of his November 30, 2016 affidavit.

days. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) Security camera footage revealed that, on at least one occasion, Chris Lawhon parked the golf cart in front of the delivery gate early in the morning (when the lot was empty), and then walked away from the parking lot toward his residence, not the marina store where he worked. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.)

Gulfstream moved for entry of the Contempt Order and presented the circuit court with the evidence described above.⁵ (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) Appellants' defense rested primarily on statements from Chris Lawhon, who did not deny parking the golf cart, but instead attempted to justify his behavior. (August 21, 2018 Opposition to Motion for Contempt, Affidavit of Chris Lawhon.) The circuit court was in an ideal position to assess Mr. Lawhon's credibility, having also heard him testify at trial. The circuit court rejected the explanations offered by Mr. Lawhon and found that Appellants had willfully violated the permanent injunction through "deliberate and intentional acts" of placing the golf cart in a manner that interfered with Gulfstream's parking easement. (November 14, 2018 Contempt Order.)

STANDARD OF REVIEW

It is within the trial court's discretion to punish by fine or imprisonment every act of contempt that comes before the court. Miller v. Miller, 375 S.C. 443, 452, 652 S.E.2d 754, 759 (Ct. App. 2007). The power to punish for contempt is inherent in all courts and is vital for the preservation of order in judicial proceedings. In re Brown, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998). The decision to impose a contempt sanction "is within the discretion of the trial judge, which will not be disturbed on appeal unless it is without evidentiary support." Miller, 375 S.C.

⁵ While Gulfstream included several other potential violations of the permanent injunction in its contempt motion, the circuit court's Contempt Order was limited to the intentional blocking of the Gulfstream Delivery gate.

at 452; see also Haselden v. Haselden, 347 S.C. 48, 63, 552 S.E.2d 329, 337 (Ct. App. 2001) (“A finding of contempt rests within the sound discretion of the trial judge.”). Critically, because the appellate court lacks the opportunity for direct observation of witnesses, it should accord great deference to trial court findings where matters of credibility are involved. Shirley v. Shirley, 342 S.C. 324, 329, 536 S.E.2d 427, 429 (Ct. App. 2000).

ARGUMENT

I. Appellants are Barred from Challenging the Scope of the Circuit Court’s Permanent Injunction or the Language Contained in that Injunction.

Appellants’ first issue on appeal is that the injunction is insufficiently detailed and that the easements on which the injunction are based do not bar Appellants’ conduct. These contentions represent a backdoor challenge to the permanent injunction, which Appellants forfeited when they declined to appeal the entry of that order. The permanent injunction is the law of the case, and Appellants are barred from challenging its scope or the language contained in it. Moreover, even if the Court considered the substance of this challenge to the permanent injunction, Appellants’ argument are meritless.

A. The Law of the Case Doctrine Bars Relitigation of Unappealed Orders.

Under the law of the case doctrine, a party is precluded from relitigating issues determined in a lower court order when the party voluntarily abandons its appeal of that order. Hudson ex rel. Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 754 S.E.2d 486 (2014). This doctrine applies both to matters that were not raised on appeal, but should have been, and matters that were raised on appeal, but were expressly rejected by the court. Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). Further, a party who withdraws an appeal of a ruling is bound by the law of the case doctrine. Matter of Morrison, 321 S.C. 370, n. 2, 468 S.E.2d 651, n. 2 (1996). As explained by the Court in Morrison, an unappealed ruling becomes the law of the case and

precludes further consideration of the issue on appeal. Id.; see also Doran v. Doran, 288 S.C. 477, 478, 343 S.E.2d 618, 619 (1986) (holding that no objection can be made to an appealable order from which no appeal was actually taken). The purpose of the law of the case doctrine is to promote the finality of the judicial process by protecting against the agitation of settled issues. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015).

The opinion in Hudson is particularly on point. The appellant in Hudson unsuccessfully challenged the validity of a worker's compensation award on abatement grounds. Hudson ex rel. Hudson, 407 S.C. at 119. The appellant filed a notice of appeal regarding the abatement issue but later withdrew the appeal. Id. When a subsequent dispute arose regarding payment of the award, the appellant reasserted its prior challenges to the validity of the award. Id. The circuit court, Court of Appeals, and Supreme Court all held that the appellant could not challenge the order on abatement grounds because the order was unappealed and therefore law of the case. Id.

B. Appellants' Current Arguments About Scope and Language of the Injunction Are Barred by Law of the Case.

Appellants spend multiple pages in their brief arguing generally about the language of the injunction and the rights afforded to Gulfstream under the permanent easement. Critically, these exact arguments were contained in Appellants' Motion to Alter or Amend the Court's permanent injunction (the "Motion to Amend Injunction") (August 6, 2018 Motion to Alter or Amend Injunction), which the circuit court considered and denied. (November 14, 2018 Order denying Defendants' Motion to Amend Injunction). Appellants appealed that order but then withdrew the appeal. (December 13, 2018 Notice of Appeal; February 4, 2019 Order Dismissing Appeal.) At that point, Appellants lost their right to challenge these aspects of the injunction pursuant to the law of the case doctrine.

1. Appellants Unsuccessfully Contested the Scope of the Permanent Injunction But Declined to Pursue an Appeal on that Subject.

In June 2018 the circuit court entered its permanent injunction, which enjoined Appellants from interfering with the rights granted to Gulfstream in the easements. Following entry of the permanent injunction, Appellants raised concerns about the scope of this injunction and the language contained therein. Specifically, in their Motion to Amend Injunction, Appellants argued that the permanent injunction improperly enlarged Gulfstream's easement rights by allowing Gulfstream to block Appellants from parking in specific areas of the parking lot. (Mot. to Amend Injunction at 5-6.) Appellants further claimed that the injunction could not block Appellants from accessing portions of the parking lot property because the underlying easements were nonexclusive. (Motion to Amend Injunction at 6.)

Moreover, Appellants made clear in their Motion to Amend Injunction that they were concerned with the very conduct at issue in the Contempt Order. At the time Appellants filed their Motion to Amend Injunction, they had already engaged in the contemptuous conduct, and Appellants attached Gulfstream's Motion for Contempt to their Motion to Amend Injunction. (Mot. to Amend Injunction at 7, Ex H to Motion to Amend Injunction.) Appellants argued in the Motion to Amend Injunction that the contempt motion represented an attempt by Gulfstream to enlarge its easement rights. (Mot. to Amend Injunction at 7.) Appellants further included a picture of the area below the delivery gate in their motion and claimed that "Gulfstream (Respondent) has no right to appropriate parking spaces for its sole use but apparently now it believes it can take such actions due to the Permanent Injunction." (Motion to Amend Injunction at 7.)

The circuit court considered all of these arguments raised by Appellants but ultimately denied the Motion to Amend Injunction. (November 14, 2018 Order denying Motion to Amend Injunction.) In doing so, the circuit court necessarily rejected Appellants' claims that the

permanent injunction improperly enlarged Gulfstream’s easement rights and improperly restricted the portions of the parking lot available to Appellants. At this point, Appellants’ challenge to the scope of the permanent injunction was ripe for review. But, as explained above, when Appellants withdrew their appeal (February 4, 2019 Order Dismissing Appeal), the injunction became law of the case, and they forever lost their right to challenge it.

2. The Current Appeal Recycles the Exact Same Arguments from the Previous Challenge Made by Appellants.

The first ground raised by Appellants in their current appeal covers the exact arguments they made in the Motion to Amend Injunction. First, Appellants argue that the rights under the easement are joint and non-exclusive, such that Gulfstream “is not entitled to the sole use of any specific spaces in the parking lot.” (Initial Br. of Appellants, p. 14) Appellants further argue that they could not violate the injunction by blocking Gulfstream’s delivery gate with a vehicle because they are entitled to use the exact same spaces as Gulfstream. (Initial Br. of Appellants, p. 15.) This argument plainly repeats Appellants’ position that the permanent injunction enlarged Gulfstream’s easement rights. (Motion to Amend Injunction, p. 6.) Appellants asked the circuit court to clarify that the permanent injunction did not bar it from parking in specific spaces (such as in front of the delivery gate), and the circuit court declined the invitation. The present appeal is not the forum for Appellants to relitigate that issue.

Appellants also contend that the circuit court misread the easements on which the injunction and Contempt Order are based. (Initial Br. of Appellants, p. 14.) The crux of Appellants’ position is that the easement⁶ covers only ingress, egress, and parking, and is silent about which parking spaces Appellants can access. (Initial Br. of Appellants, p. 15.) Again,

⁶ The parties entered into several easement agreements, all of which grant identical rights to the parking lot. (See generally Compl. ¶¶ 14-15.)

Appellants raised this very argument with the trial court in their Motion to Amend Injunction when they asked the court to find that Gulfstream could not appropriate parking spaces for its sole use on the ground that the easements contained nonexclusive language. (Motion to Amend Injunction, p. 6.) The circuit court rejected that request, and the content of the permanent injunction cannot now be challenged.

The present situation is nearly identical to that presented in the Hudson case. Appellants received an unfavorable order when the permanent injunction was entered. Appellants challenged the scope of the order, including the specific issue of whether the order barred Appellants from blocking Gulfstream's delivery gate. When Appellants declined to fully pursue that challenge to the permanent injunction order, the order became law of the case. As with the appellant in Hudson, Appellants cannot now resurrect the prior challenge. This result is completely consistent with the purpose underlying the law-of-the-case doctrine, which is to promote finality of orders and prevent repeated challenges to matters that should be settled. The bottom line is that Appellants would like for this Court to find that the permanent injunction does not prohibit them from using a vehicle to intentionally block access to Gulfstream's delivery gate, but Appellants missed their chance to obtain review of the permanent injunction and are therefore bound by its language.

C. Appellants' Challenge to the Scope of the Permanent Injunction is Meritless.

Even if Appellants were permitted to challenge the scope and language of the permanent injunction in this appeal, their arguments are baseless. Appellants contend that the permanent injunction failed to expressly prohibit the conduct at issue in this case. (Initial Br. of Appellants, p. 13.) This is untrue. The circuit court plainly stated that Appellants were barred from denying Gulfstream the rights contained in the permanent easement. (June 12, 2018 Permanent Injunction; July 27, 2018 Order granting Gulfstream's Motion to Alter or Amend Permanent Injunction.) Those easement rights expressly include ingress, egress and parking on the parking lot area. (Compl., Ex. A.) And, critically, the easement agreement executed by the parties in 1990 extended the easement rights to Gulfstream's agents and invitees. (Compl., Ex. A.) This means that persons delivering food or other products to the Gulfstream restaurant may access the easement in the same manner as Gulfstream itself. When Appellants used a golf cart to block access to the Gulfstream delivery gate, they prevented delivery persons from parking in that portion of the parking lot. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) This conduct interfered with the express rights granted in the easement and willfully violated the permanent injunction, which prohibited such interference.

Appellants' argument on this subject overlooks the fact that the rights Appellants violated are the clearly stated rights to ingress, egress, and parking. Appellants contend that Chris Lawhon did not prevent anyone from parking in the parking lot, but the reality is that his conduct intentionally precluded delivery persons from using the portion of the parking lot necessary to access the delivery gate. As such, this conduct prevented Gulfstream's agents/invitees from enjoying the full and free right to access the easement area in direct contravention of the plain language of the easement. While Appellants claim that they merely used a parking space, it was the circuit court's job to hear evidence and determine whether Appellants properly used the space

or whether they willfully violated the court's permanent injunction and improperly interfered with Gulfstream's easement rights.

Appellants also claim that the circuit court should have expressly barred Appellants from blocking the Gulfstream delivery gate. (Initial Br. of Appellants, p. 16.) There was no need for the circuit court to specifically identify the delivery gate, because that represents just one way in which Appellants could interfere with Gulfstream's easement rights. Given Appellants' history of interfering with the Gulfstream easement, the circuit court was right to broadly enjoin all interference. There is no uncertainty about what that broad prohibition means—any time Appellants act to deny Gulfstream the full and free rights to ingress, egress, and parking, they interfere with the easement and violate the injunction. In this case, the circuit court still had to determine if its order had been willfully violated, but there was never uncertainty regarding what rights were implicated. The Court should therefore decline to entertain Appellants' arguments regarding the scope of the permanent injunction order.

II. The Circuit Court's Contempt Order Was Supported by Sufficient Evidence.

Appellants next contend that the circuit court's Contempt Order was not supported by the evidence in the record. Critically, this Court is limited to determining whether evidence existed in the record that enabled the circuit court to exercise its discretion in entering the Contempt Order. Miller, 375 S.C. at 461. A contempt order can only be reversed if it is without evidentiary support. Rhoad v. State, 372 S.C. 100, 104–05, 641 S.E.2d 35, 37 (Ct. App. 2007). The circuit court possessed the discretion to determine the credibility of witnesses and assign weight to their statements. Id.; accord Shirley, 342 S.C. at 329.

Reviewing the evidence using the correct standard confirms that the circuit court did not err in holding Appellants in contempt. It is undisputed that Chris Lawhon repeatedly parked a golf cart in a space that blocked Gulfstream's delivery gate. (July 20, 2018 Motion for Contempt,

Affidavit of Jef Kirk.) It is likewise undisputed that the golf cart stayed in place for multiple days, even after Gulfstream's employees asked Mr. Lawhon to move it. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) And there is no dispute that Mr. Lawhon's father, Appellant Mark Lawhon, engaged in the exact same conduct of blocking the Gulfstream delivery gate when the dispute between the parties first arose in 2016. (November 30, 2016 Affidavit of Jef Kirk at ¶¶ 11-14, submitted in support of December 2, 2016 Motion for Temporary Injunction.)

In the face of this undisputed evidence, Appellants make two unpersuasive arguments. First, Appellants claim that Gulfstream occasionally received deliveries through the front door of the restaurant. (Initial Br. of Appellants, p. 18.) Even if that were true, Gulfstream's manager, Jef Kirk, submitted a sworn affidavit explaining the harm that Gulfstream's operations suffered when its delivery gate was blocked. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) Appellants do not dispute the content of the affidavit, and they certainly cannot argue that Gulfstream never used the delivery gate. Further, Gulfstream submitted photographs depicting food delivery trucks being unable to access the elevated delivery gate due to the presence of the golf cart (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) Given this evidence, the fact that Gulfstream received limited deliveries through its front door does not in any way undermine the Contempt Order.

Appellants next claim that contempt is inappropriate because Chris Lawhon did not intend to block access to Gulfstream's delivery gate. (Initial Br. of Appellants, p. 18-19.) Appellants argue, in essence, that Chris Lawhon's conduct was an inadvertent, rather than willful, violation of the permanent injunction. This argument is based solely on the self-serving affidavit presented by Mr. Lawhon. The circuit court had the opportunity to review that affidavit and to assess whether the statements contained therein were credible. The circuit court was in an ideal position to consider Chris Lawhon's credibility given that the court had previously heard Mr. Lawhon testify

at trial. The circuit court did not abuse its discretion in declining to believe Mr. Lawhon's self-serving statements and finding an intentional violation of the injunction.

Setting aside credibility determinations, the objective facts and circumstances surrounding Chris Lawhon's conduct, when viewed in the full context of the parties' dispute, fully support the conclusion that he willfully violated the permanent injunction. Chris Lawhon placed his golf cart in the same parking spot and left it there for days on end, despite the fact that Gulfstream employees asked him to move it, and despite the fact that there were dozens of empty spaces in the parking lot. (July 20, 2018 Motion for Contempt, Affidavit of Jef Kirk.) His father engaged in the exact same conduct at the inception of the case—he used a vehicle to prevent Gulfstream from accessing its delivery gate and reviewed to move. (November 30, 2016 Affidavit of Jef Kirk at ¶¶11-14, submitted in support of December 2, 2016 Motion for Temporary Injunction.) Chris Lawhon's conduct was no innocent coincidence—it was a reprise of his father's previous, intentional interference. On this record, the circuit court was amply justified in finding Appellants in contempt.

III. The Circuit Court Did Not Err in Denying Appellants' Motion to Reconsider.

Appellants' next issue on appeal wholly mischaracterizes the record below. Appellants claim that the circuit court erred by denying Appellants' motion to alter or amend the Contempt Order as untimely. This statement is patently incorrect.

Appellants filed a motion pursuant to Rule 59(e) asking the Court to alter or amend the Contempt Order. Pursuant to Rule 59(g), Appellants were required to provide a copy of the motion to the judge within ten days of filing the motion. The purpose of Rule 59(g) is to ensure that the judge is promptly notified that a motion has been filed. Failure to comply with Rule 59(g) is a sufficient ground for denial of the motion. Gallagher v. Evert, 353 S.C. 59, 63, 577 S.E.2d 217,

219 (Ct. App. 2002) (noting that failure of party to comply with Rule 59(g) empowered circuit court to deny motion to alter or amend).

Here, the circuit court issued an order denying Appellants' motion to alter or amend the Contempt Order. While the court observed that Appellants failed to comply with Rule 59(g), the court went on to consider the merits of that motion. (August 7, 2018 Order denying Motion to Alter/Amend Contempt Order.) Appellants even acknowledge that the court considered their motion on the merits, which makes their argument about Rule 59(g) completely irrelevant. (Initial Br. of Appellants, p. 20.) Simply put, it would have been entirely appropriate for the circuit court to deny Appellants' motion based solely on Rule 59(g) grounds. But since the court considered the merits of Appellants' motion, there is no reason for Appellants to complain about the procedure.

IV. The Circuit Court's Contempt Order Contains Sufficient Findings.

Appellants' final argument on appeal is the baseless contention that the Contempt Order contained insufficient detail. Appellants contend that the Contempt Order was insufficient because it was a relatively short order. (Initial Br. of Appellants, pg. 23.) Tellingly, Appellants do not cite to any authority that lays out what requirements must be met to make a contempt order "sufficient." Appellants state only, without any citation to authority, that a contempt order must "show what particular conduct violated what particular part of an order." (Initial Br. of Appellants at 21.)⁷

While South Carolina law does not contain any requirements that a court must meet in drafting and ultimately issuing a contempt order, it is apparent that the Contempt Order in the present case is more than adequate. The circuit court's Contempt Order plainly details what action

⁷ The decision in Jackson v. Jackson, 241 S.C. 1, 15–16, 126 S.E.2d 855, 863 (1962) does not impose the requirements listed by Appellants, but simply affirmed a finding of contempt and noted that the circuit court had provided a "well-considered order."

violated the injunction—the placement of the golf cart. (November 14, 2018 Contempt Order.) Likewise, the Contempt Order makes clear that this action directly violated the permanent injunction by interfering with the proper use of the easement. (November 14, 2018 Contempt Order.) The Contempt Order further makes clear that Appellants acted willfully in violating the injunction, and the Order explains the nature and timing of the punishment for contempt. (November 14, 2018 Contempt Order.) This information fully details Appellants’ (self-created) requirement that a contempt order show what particular conduct violated what particular part of the permanent injunction.

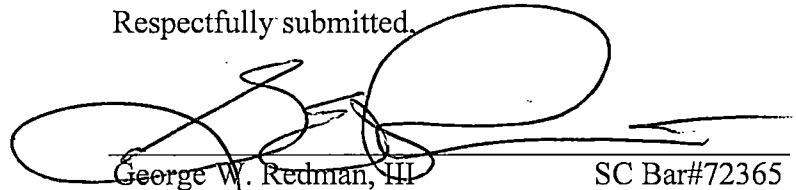
Appellants also argue that a circuit court must provide further factual findings when it renders a contempt order based on affidavits. Appellants cite to absolutely no authority in support of this proposition, and South Carolina law contains no requirement that orders decided based on written submissions (whether involving contempt or otherwise) require more detailed written findings than those based on in-person testimony. Moreover, the circuit court here had previously heard testimony from the affiants and therefore was absolutely able to assess the credibility of those witnesses. As explained above, there is no question that Chris Lawhon blocked Gulfstream’s delivery gate with a golf cart; the only dispute is whether he intended to interfere. The circuit court expressly found that Appellants engaged in deliberate and intentional acts of interference, which means the court necessarily rejected Appellants’ sole defense that any interference was by accident. (November 14, 2018 Contempt Order.) There was absolutely no need for the circuit court to provide further detail, and this Court should reject Appellants’ argument on this point.⁸

⁸ Even if the Court were to find that the Contempt Order insufficiently detailed, the appropriate recourse would be to remand the Order for the circuit court to provide further factual findings. The opinion in Rawcliffe Resorts, Inc. v. Matt Becker & Assocs., Inc., No. 2014-001152, 2016 WL 821187, at *1 (S.C. Ct. App. Mar. 2, 2016), cited by Appellants in their Brief, supports this result, as the Court of Appeals in that case remanded a contempt order to resolve an inconsistency regarding whether the party had been held in criminal or civil contempt.

CONCLUSION

In sum, the circuit court properly considered the evidence of Appellants' contempt, properly applied South Carolina law, and properly found that Appellants had willfully violated a court order for the second time in this litigation. Appellants' efforts to overturn this order fail because they cannot now challenge the permanent injunction, the evidence in the record supports the circuit court's contempt order, and there are no procedural defects in that Contempt Order. Accordingly, the circuit court's order granting Gulfstream' motion for contempt should be affirmed.

Respectfully submitted,



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January 24, 2020

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Fifteenth Judicial Circuit

Honorable Steven H. John, Circuit Court Judge

Civil Action No. 2016-CP-22-00961

RECEIVED

JAN 27 2020

Appellant Case No. 2019-001446

SC Court of Appeals

The Gulfstream Café, Inc.....Respondent,

vs.

J. Mark Lawhon, Individually and

Palmetto Industrial Developments, LLC Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Initial Brief and Designation of Matter on Appellants J. Mark Lawhon, Individually and Palmetto Industrial Development, LLC by depositing a copy of it in the United States mail, postage prepaid, on January 24, 2020, addressed to its attorneys of record Henrietta Golding at Burr & Foreman, LLP, P.O. Box 336, Myrtle Beach, S.C. 29578 and Wm. Grayson Lambert at Burr & Foreman, LLP, P.O. Box 11390, Columbia, S.C. 29211.

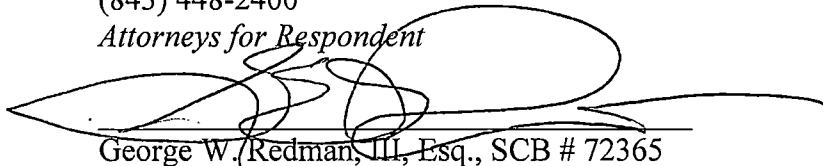
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January 24, 2020.

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January 24, 2020

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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RECEIVED
JAN 27 2020
SC Court of Appeals

Re: The Gulfstream Café, Inc., Respondent v. J. Mark Lawhon, Individually and
Palmetto Industrial Development, LLC, Appellants
Appellate Case No. 2019-001446

Dear Ms. Kitchings:

Enclosed please find the Respondents Initial Brief and Designation of Matter for filing in the above-referenced matter. Please return a clocked copy of the documents to our office in the self-addressed stamped envelope enclosed for your convenience. Should you have any questions or require any additional information, please do not hesitate to contact our office.

With kindest regards, we are

Yours truly,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

George W. Redman, III
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GWR:kel
Enclosures, as noted
cc: Client
All Counsel of Record

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