THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2019-001446

Case No. 2016-CP-22-00961

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

v.

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

FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

STATEMENT OF THE ISSUES ON APPEAL

I. Whether the injunction prohibited Palmetto Industrial and Lawhon from parking a golf cart in designated parking space, when the easements on which the injunction was based were joint and nonexclusive and allowed Palmetto Industrial to use any parking space at any time.

II. Whether the evidence proves beyond a reasonable doubt that Palmetto Industrial and Lawhon violated the order, when they presented evidence undermining both Gulfstream's claimed harm from not being able to use the delivery gate and the willfulness of the supposed violation.

III. Whether the circuit court wrongly denied the motion to reconsider as untimely.

IV. Whether the circuit court's order holding Palmetto Industrial and Lawhon in criminal contempt provides this Court a sufficient explanation for its decision, when the order includes only a conclusory sentence that Palmetto Industrial and Lawhon had violated the order despite conflicting evidence in the record.

INTRODUCTION

Contempt is serious. So serious, in fact, that this Court has called it "an extreme measure" and warned circuit courts that "the power to find an individual in contempt is not to be lightly asserted." *Ex parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). That power may be asserted only when an order clearly prohibits what a party did. *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973). This is particularly the case with criminal contempt, which requires that a party's willful

disregard for a court order be proven beyond a reasonable doubt. *See DiMarco v. DiMarco*, 393 S.C. 604, 607, 713 S.E.2d 631, 633 (2011).

The circuit court's finding of criminal contempt in this case suffers from three flaws, any of which requires that finding to be reversed. The first flows from the circuit court's misreading of the easements on which the order was based. The circuit court held Palmetto Industrial and Lawhon in contempt for doing something that the order did not prohibit them from doing. The order contains no limits on where Palmetto Industrial and Lawhon can park, so parking the golf cart in a designated parking space, even one in front of The Gulfstream Café's delivery gate, could not have violated the order.

The second stems from the circuit court's ignoring evidence Palmetto Industrial and Lawhon presented that undermines Gulfstream's alleged harm. Gulfstream said that deliveries going through the front door caused too much wear on the floors, so the deliveries needed to go through the delivery gate. Yet even when no car blocked this delivery gate, some deliveries still did not go through the gate. This evidence raises reasonable doubt.

The third is found in the brevity of the order. Even if the order did limit where Palmetto Industrial and Lawhon could park, the order fails to explain how the conflicting evidence the parties submitted proves Palmetto Industrial and Lawhon violated the order beyond a reasonable doubt. The circuit court's single conclusory sentence does not give this Court a sufficient explanation to determine whether the circuit court abused its discretion in weighing the conflicting evidence.

STATEMENT OF THE CASE

Two Garden City restaurants share a parking lot.

Palmetto Industrial Development, LLC, whose sole member is Mark Lawhon, owns the Marlin Quay Marina. (R. p. 509.) The marina property includes a store and a restaurant, called the Marina Quay Marina Bar & Grill, which is run by Lawhon's son, Chris. (R. p. 504.) Palmetto Industrial also owns the parking lot on the marina property. (R. pp. 57, 59–60.)

The other restaurant is The Gulfstream Café. Located on the opposite side of the parking lot, Gulfstream does not own that parking lot, but instead it has four nonexclusive easements to use it, three from 1986 and one from 1990. (R. p. 57–59.) These easements identify two purposes for which Gulfstream may use the parking lot. First, Gulfstream may use the parking lot for "ingress, egress and vehicular parking." (R. p. 69.) Second, it may use the parking lot for the "maintenance, repair, alteration and/or improvements" of its building. (R. pp. 860, 1233, 1239.) Those easements are joint and nonexclusive, and Palmetto Industrial and Lawhon have the right to use the parking lot at any time. (R. pp. 69, 860, 1233, 1239.)

Gulfstream sues over the easements* after *Palmetto Industrial had torn down the old building.

After Palmetto Industrial purchased the marina property in 2014, it developed plans to replace the old Marina Bar & Grill building with a new one. (R. pp. 509–10.) Throughout 2015 and 2016, Lawhon and his son, Chris, met with representatives from Gulfstream about this plan and the construction project it would entail. (R. pp. 505–07, 509–13.) At no time during these conversations did Gulfstream object to

Palmetto Industrial's plans, including how the parking lot would be managed during construction. (R. pp. 505–07, 509–13.)

In early November 2016, Palmetto Industrial demolished the old Marina Bar & Grill building. Shortly after the old building came down and without any notice to Palmetto Industrial and Lawhon, Gulfstream filed this lawsuit. (R. pp. 53–65, 513.) Palmetto Industrial and Lawhon answered the complaint and filed counterclaims. (R. pp. 83–94.)

Along with its complaint, Gulfstream sought and obtained a temporary restraining order that prohibited Lawhon and Palmetto Industrial from interfering with Gulfstream's easements and requiring any obstructions in the parking lot be removed. (R. pp. 422–24, 1–2.) The next day, Palmetto Industrial removed the temporary construction fencing that had been put up while the building was being torn down. (R. p. 513.) The temporary restraining order expired on December 5, 2016 at 10:00 AM. (R. p. 4.)

Gulfstream also moved for a preliminary injunction. (R. pp. 430–471.) At a hearing on that motion on the same day the temporary restraining order expired, Gulfstream admitted that it sought to enjoin Palmetto Industrial from building its new building for the Marina Bar & Grill. (R. p. 149, lines 15–21.) Later that day, the circuit court indicated via email that it would grant the preliminary injunction, subject to certain conditions. (R. pp. 700–01.) The circuit court did not enter the order granting the injunction until August 24, 2017. (R. pp. 7–17, 18–28.)

Gulfstream files its first motion to compel before the preliminary injunction is actually entered.

Three months before the circuit court entered the preliminary injunction,[1] Gulfstream moved to hold Lawhon and Palmetto Industrial in contempt. (R. pp. 577–610.) That motion was based on tents that Palmetto Industrial put up on the parking lot on a weekend in May 2017 that took up ten or twelve parking spaces, as part of a fishing tournament. (R. pp. 578–81.) In a supplement to its motion for contempt, Gulfstream also claimed that Lawhon and his son violated the injunction by calling the sheriff's department on two occasions and claiming that window washers at Gulfstream were trespassing on Palmetto Industrial's property. (R. pp. 611–18.)

In opposing that motion, Lawhon explained that multiple fishing tournaments were held every year at the marina, and since Palmetto Industrial purchased the marina in 2014, three tournaments had been held before the one that led to the motion for contempt. (R. pp. 706–07.) This motion was the first time Gulfstream ever objected to Palmetto Industrial's use of the tents for the fishing tournaments. (R. pp. 706–07.) In fact, Gulfstream had supported and even sponsored previous fishing tournaments. (R. pp. 707–08.) Moreover, while the tent was in the parking lot in May

[1] At the hearing, the circuit court (Judge Culbertson presided over the preliminary injunction and the first contempt motion before the case was assigned to Judge John) disagreed with the contention that the injunction had not been entered by the Form 4 order dated December 5, 2016. (R. p. 174, line 7–p. 176, line 21.) The Form 4 order did not comply with Rule 65(d), SCRCP, which requires an injunction to set forth the reason for the injunction and identify specifically what a party is restrained from doing, without reference to any other document. The Form 4 order stated merely that the motion for a preliminary injunction was "granted" and Gulfstream's counsel was to prepare a formal order. (R. p. 5–6.) Nevertheless, this error is not at issue on appeal here.

2017, at least forty parking spaces were available still, and the parking lot was never full. (R. p. 708.)

As for the window washers, the sheriff's deputy who responded to the call about the window washers said that Chris Lawhon stated he called the sheriff's department because he "was afraid the window washers were going to fall off the ladders into oyster beds and injure themselves." (R. p. 867.) The deputy agreed the situation was dangerous. (R. p. 868.) Nothing the deputy did in response to the phone call about the window washers prevented them from completing their task. (R. p. 868.)

This dispute over the tent continued into the late summer, before the motion for contempt was decided. Gulfstream again objected to Palmetto Industrial's plan to put up a tent for an October 2017 fishing tournament. (R. pp. 802–03.)

Still before the circuit court decided the first motion for contempt, Gulfstream complained further that Lawhon and Palmetto Industrial were violating an order. Gulfstream claimed that orange cones had been put in the parking lot. (R. pp. 813–14, 817–18.) These cones, however, were put in places that were not actually parking spaces and over a protruding metal cap to keep cars from hitting it. (R. pp. 821–22.)

The circuit court granted the motion for contempt in part. It held that Lawhon violated the "prior court order" (the circuit court did not specify what order) during the May 2017 fishing tournament, but the court imposed no sanction. (R. p. 30.) In fact, the circuit court granted a motion to amend the preliminary injunction to allow Palmetto Industrial and Lawhon to use up to twelve parking spaces each May and October for fishing tournaments. (R. p. 31; *see also* R. pp. 710–20.) The circuit court

held that the cones did not violate any order. (R. p. 30.) But it did hold Lawhon in criminal contempt for calling the sheriff's department about the window washers and imposed a $3,000 fine. (R. p. 30.)

The case is tried in June 2018, and the court enters a permanent injunction.

After a six-day trial in June 2018, the jury found for Gulfstream on its claim for interference with the easements. (R. p. 36.) After it initially awarded $0, Judge John instructed the jury it must award some amount of monetary damages as its verdict finding in Gulfstream's favor was inconsistent with the award of $0. Ultimately, the jury came back with an award of $1,000, which has been paid. (R. pp. 36, 1292.) The jury awarded no punitive damages. (R. p. 38.) The jury also found for Gulfstream on Palmetto Industrial and Lawhon's claims for trespass (related to the location of Gulfstream's dumpster) and breach of the easement (related to the cost of maintaining the parking lot). (R. p. 37.)

Based on the verdict, the circuit court entered a permanent injunction prohibiting Palmetto Industrial and Lawhon from "preventing [Gulfstream] from enjoying the right granted to it in the recorded nonexclusive joint easement." (R. p. 34.) The injunction also provided that Palmetto Industrial and Lawhon "may not expand the outside boundaries of any new building beyond those previously used."[2] (R. p. 34.)

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[2] The injunction was amended to specify that the "outside boundaries" were those depicted in an old plat book. (R. p. 40.) Gulfstream later filed a third contempt motion based on underground pilings for the new building (because they are underground, they have no effect on anyone's use of the parking lot), but Gulfstream withdrew that motion the day before the hearing. (R. pp. 1293–303, 1323.)

Gulfstream files a second motion for contempt.

The same day the circuit court entered its injunction, Gulfstream moved again to hold Palmetto Industrial and Lawhon in contempt. That motion is the focus of this appeal. In that motion, Gulfstream claimed that Chris Lawhon parked a golf cart in front of a delivery gate at Gulfstream's restaurant in July 2018, which made delivering food more difficult. (R. pp. 878–86; *see also* R. pp. 1174–79.)

Beyond the motion, Gulfstream alleged that Palmetto Industrial and Lawhon violated the injunction in other ways. For instance, Gulfstream claimed that Palmetto Industrial and Lawhon "failed to operate" the parking-lot lights some evenings. (R. pp. 1130, 1180–83.) It also claimed that a box truck and boat trailers were parked "near the area" where deliveries were made to Gulfstream, that Chris Lawhon parked his truck partially on Gulfstream's property, and that Mark Lawhon parked his car across from Gulfstream's delivery gate, in an attempt to block deliveries. (R. pp. 1138–41, 1181.)

Palmetto Industrial and Lawhon offered responses to each of these allegations. As for the golf cart, Chris Lawhon was driving the golf cart because his car was being repaired, and he parked near Gulfstream's restaurant (in a designated parking space) because, when he arrives at the marina before 6:00 AM, he wants to stay out of the way of people arriving for fishing charters. (R. p. 1114.) He walked away from the marina one day simply because he dropped something from the golf cart. (R. p. 403, lines 13–15.) Only after Chris Lawhon had parked in this spot did Gulfstream put up a no-parking sign there (a sign which the easements gave Gulfstream no authority to

put up), and even with this sign posted, Gulfstream still allowed its employees to park in that spot, despite vendors making deliveries at those times. (R. pp. 1115–19, 1142–45.)

On the other issues, the lights did not work properly because a new sprinkler system at the nearby condo complex soaked Palmetto Industrial's electrical panel box; the problem was soon fixed. (R. p. 1132, 1199, 1201.) The box truck and trailers did not, in fact, block any deliveries, and Gulfstream's operating manager, Jef Kirk, and other employees have parked in those same spaces. (R. pp. 1119–22, 1125–28, 1132–36.) Finally, Chris Lawhon's truck being parked partially on Gulfstream's property for forty-four minutes while a charter boat was having its oil changed did not prevent any deliveries from being made. (R. p. 1124.)

The parties disputed much of these issues. For instance, Gulfstream claimed that Jef Kirk texted Chris Lawhon about the golf cart, but Chris Lawhon denied receiving those messages. (*Compare* R. pp. 1180–81, *with* R. p. 1196.) Gulfstream claimed its employees parked near the delivery gate to prevent the Lawhons from parking there, but Chris Lawhon said the employees "rarely, if ever" move their cars. (*Compare* R. p. 1181, *with* R. pp. 1196–97.) And Gulfstream claimed that boat trailers were not typically parked in the lot for multiple weeks, but Chris Lawhon noted that the marina's customers "routinely" parked boat trailers in the parking lot. (*Compare* R. p. 1182, *with* R. pp. 1198–99.)

The circuit court held a hearing on the second contempt motion on November 14, 2018. (R. pp. 372–421.) That court found Palmetto Industrial and Lawhon in

criminal contempt for "deliberate and intentional acts by placement of the golf cart which interfered with the proper use of the non-exclusive easement in this matter and was in direct violation of the Court's previous order." (R. p. 45.) The court's order included no other details or factual findings. Palmetto Industrial and Lawhon were ordered to pay a fine of $5,000. (R. p. 45.)

Palmetto Industrial and Lawhon moved to reconsider on November 21, 2018. (R. pp. 1202–10.) That motion was emailed and hand delivered to Judge John on December 12, 2018. (R. pp. 1284–91.) Despite Gulfstream's request that the circuit court deny the motion as untimely delivered to the circuit court under Rule 59(g), SCRCP, the circuit court nevertheless requested written arguments from both sides by July 1, 2019, in lieu of a hearing. (R. pp. 1284–85; *see also* R. pp. 1245–55, 1278–83.)

The circuit court ultimately denied the motion to reconsider. It did so because the motion was not submitted to Judge John within ten days and because, according to the circuit court, the "evidence made clear [Palmetto Industrial and Lawhon] willfully, voluntarily, and intentionally disobeyed the Court's Permanent Injunction by interfering with the easement." (R. pp. 49–52.) The order included no further discussion of that evidence.

Palmetto Industrial and Lawhon timely appealed. (R. pp. 1304–13.)

STANDARD OF REVIEW

This Court reviews a finding of contempt for abuse of discretion. *Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 823 (Ct. App. 2009). A finding of contempt

should be reversed whenever "it is without evidentiary support or the circuit court abused its discretion." *Id.* A circuit court abuses its discretion when it lacks evidentiary support for its decision or makes an error of law. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

ARGUMENT

I. Parking the golf cart in front of Gulfstream's delivery gate did not violate the injunction.

It is axiomatic that a party may be held in criminal contempt only for violating a court order. *See, e.g., Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 759 (Ct. App. 2007) ("Contempt results from the willful disobedience of an order of the court."). Here, the injunction does not prohibit Palmetto Industrial or Lawhon from parking in a designated parking space in front of Gulfstream's delivery gate. The circuit court therefore abused its discretion concluding that Palmetto Industrial and Lawhon violated the injunction and holding them in criminal contempt.

A. The order prevented Palmetto Industrial and Lawhon only from interfering with Gulfstream's easement rights.

An injunction must "be specific in terms" and "describe in reasonable detail . . . the act or acts sought to be restrained." Rule 65(d), SCRCP. This requirement goes hand-in-hand with the rule that a party "may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do. The language of the commands must be clear and certain rather than implied." *Welchel*, 260 S.C. at 421, 196 S.E.2d at 498.

In this case, the injunction was short. It prohibited Palmetto Industrial and Lawhon "from preventing [Gulfstream] from enjoying the right granted to it in the recorded nonexclusive joint easement."[3] (R. p. 40.)

The starting point for determining what rights the easements give Gulfstream and what limitations they impose on Palmetto Industrial is, of course, the language of the easements. *See Snow v. Smith*, 416 S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016). In those easements, Gulfstream was granted two specific rights in using the parking lot: (1) for "ingress, egress and vehicular parking" and (2) for the "maintenance, repair, alteration and/or improvements" of its building. (R. pp. 69, 860, 1233, 1239.)

These rights are, importantly, "joint and non-exclusive." (R. pp. 68, 860, 1233, 1239.) That means that Gulfstream is not entitled to the sole use of any specific space in the parking lot. Gulfstream can use any space at any time, just as Palmetto Industrial can. As the 1990 easement said, both parties "have joint and non-exclusive use *at all times* of" the parking lot. (R. p. 68 (emphasis added).)

B. Because the easements do not limit where Palmetto Industrial or Lawhon can park, parking the golf cart in a designated parking space did not violate the injunction.

Despite the myriad complaints Gulfstream lodged, the circuit court held that only Chris Lawhon's parking a golf cart in front of Gulfstream's delivery gate constituted criminal contempt. (R. p. 45.) But the easements (and thus the injunction)

[3] This need to look to separate documents demonstrates that the injunction violates Rule 65(d).

do not limit where the golf cart could be parked. Therefore, the circuit court was wrong when it held that parking the golf cart in front of the delivery gate supported a contempt finding.

Beginning with the rights granted to Gulfstream in the easements, neither was interfered with by where the golf cart was parked. First, Chris Lawhon did not stop any coming or going from the parking lot, nor did he prevent anyone from parking. (Recall that Gulfstream does not have a right to any specific space.) He merely used a parking space. Second, he did not prevent Gulfstream from maintaining, repairing, altering, or improving its building. Delivery of goods is unrelated to any work on the building itself.

Coming at the easements from a different angle, the easements do not expressly prohibit what Chris Lawhon did. The easements say nothing about any delivery gate. The easements say nothing about Palmetto Industrial not being able to use certain parking spaces. (In fact, they affirmatively allow Palmetto Industrial to use any parking space, at any time.) All Chris Lawhon did was park a golf cart in a designated parking space.

Chris Lawhon's motivation for parking the golf cart near the delivery gate is irrelevant. Assume that Gulfstream is correct about Chris Lawhon's motivation for parking the golf cart in front of the delivery gate. In other words, assume Chris Lawhon parked the golf cart where he did to "repeatedly and intentionally block[] the delivery gate." (R. p. 393, lines 7–8.) That does not matter. His motivation does not change the language of the easements—and that language is what controls. *See*

Snow, 416 S.C. at 85, 784 S.E.2d at 248. Under that language, neither Palmetto Industrial nor Mark Lawhon (nor their agent, Chris) violated the easements. Because no one violated the easements, no one violated the injunction. No one therefore should have been held in criminal contempt.

The circuit court's contrary conclusion reads the easements and the injunction more broadly than they are written. The easements give Gulfstream two (and only two) specific rights: for parking and for maintaining its building. Nothing more. The easements do not, as Gulfstream framed it below, "require[] the parties to co-exist" in some harmonious fashion (however desirable that might be). (R. p. 1280.) When the circuit court read what amounted to a "be a good neighbor" provision into the easements and thereby into the injunction, the circuit court went beyond the plain language of the easements and erred in its interpretation of the easements and its own injunction. That was an error of law and thus an abuse of discretion. *See Hunt v. Forestry Comm'n*, 358 S.C. 564, 568, 595 S.E.2d 846, 848 (Ct. App. 2004) ("The construction of a clear and unambiguous deed is a question of law for the court.").

Put differently, if the circuit court had wanted to enjoin Palmetto Industrial and Lawhon from parking in front of Gulfstream's delivery gate, the circuit court could have expressly said so (assuming it would have had a legal basis for doing so). But the circuit court did not. Its injunction was limited to Gulfstream's easement rights. And nothing in the easements prohibits (at least clearly) Palmetto Industrial or Lawhon from parking in a designated parking space. Therefore, parking in front of the delivery gate did not violate the injunction. *See, e.g., Spartanburg Buddhist*

Ctr. of S.C. v. Ork, 417 S.C. 601, 606, 790 S.E.2d 430, 433 (Ct. App. 2016) ("it was error for the circuit court to place Ork in contempt for spending money from the Center's account when the first injunction failed to specify such restrictions and those restrictions were only implied").

II. Palmetto Industrial and Lawhon presented evidence that undermined Gulfstream's claimed use of the delivery gate and any finding of a willful violation.

For at least two reasons, the evidence does not support a finding of criminal contempt. The first is Gulfstream's supposed use of its delivery gate, and the second is the lack of a willful violation.

First, the thrust of Gulfstream's contempt argument on the golf cart was that by parking in front of the delivery gate, Palmetto Industrial and Lawhon made it difficult for vendors to make deliveries to the restaurant. (*See, e.g.*, R. p. 881.) Underlying this argument is the premise that the easements (rather than some other source of law) prevent Palmetto Industrial and Lawhon from making deliveries to Gulfstream more difficult. Even accepting this premise (a big step, given the plain language of the easements, *see supra* Part I.A.), Gulfstream's argument is belied by its own actions.

According to Gulfstream, having to make deliveries through the front door, rather than through the delivery gate, is "inefficient and causes excess wear and tear to the floors of the restaurant," even though Gulfstream admittedly has no problem with wine and liquor deliveries going through the front door. (R. p. 871, 1181.) In an effort to prevent Palmetto Industrial and Lawhon from blocking the delivery gate,

Gulfstream claims it has had employees park in front of the gate, so that the delivery gate could be accessed when a food delivery arrived. (R. p. 1181.) The only logical conclusion from this parking strategy is that every time a food delivery arrived, the Gulfstream car would be moved and the delivery made through the delivery gate. Indeed, Gulfstream said as much below. (R. p. 1176.)

Yet that is not what happened. Palmetto Industrial and Lawhon presented evidence showing that food deliveries did not always use the delivery gate, regardless of whether a car was parked in front of that gate. (R. pp. 1196, 1147–72.) Some deliveries went through the front door, while others used the short staircase to the side of the delivery gate. This evidence casts doubt on Gulfstream's supposed harm of deliveries going through the front door and its claim that food deliveries need to use the gate. And that doubt means that the finding of criminal contempt cannot stand. *See Ex parte Cannon*, 385 S.C. at 661, 685 S.E.2d at 824 (noting that criminal contempt must be proven beyond a reasonable doubt).

Second, Gulfstream emphasizes that on one occasion, Chris Lawhon parked the golf cart (which he was driving because his car was in the shop) in front of the delivery gate and walked away from the marina. (*See* R. p. 395, lines 5–19.) This, Gulfstream says, shows the willfulness of the violation. Assuming that parking the golf cart in a designated space was even a violation, this incident does not demonstrate any willfulness. *See Miller*, 375 S.C. at 454, 652 S.E.2d at 759 (explaining contempt requires "willful disobedience of an order"). Chris Lawhon had dropped something that morning while driving the golf cart, and he walked back to

get it. (R. p. 403, lines 13–15.) He did not, as Gulfstream claimed, get up in his "pajamas" to interfere with Gulfstream's deliveries and then head home. (R. p. 395, line 16.)

Notably, Gulfstream provided only a still photograph showing Chris Lawhon walking away. Gulfstream did not include any evidence showing when he returned, despite having its video surveillance. Had Chris Lawhon been gone for any meaningful length of time, it surely would have made much of that fact too. In this instance, Gulfstream's silence speaks volumes.

III. The circuit court was wrong to deny the motion to reconsider under Rule 59(g) after it requested written arguments from the parties and ruled on the merits.

A motion to reconsider is timely as long as it is filed within ten days of the order being reconsidered. *See* Rule 59(b), SCRCP. After Rule 59 was adopted, a new provision—Rule 59(g)—was added, requiring a copy of a motion to reconsider to be sent to the trial judge within ten days of filing. *See* Rule 59(g), SCRCP. That rule "is intended to help insure that the judge is promptly notified that the motion has been filed." Rule 59, SCRCP, Note to 1998 Amendment.

Although Palmetto Industrial and Lawhon timely moved to reconsider, that motion was not sent to Judge John within ten days. (R. p. 1290.) Gulfstream was quick to point that out in an email to Judge John. (R. p. 1288.) Nevertheless, Judge John—five months later—ordered the parties to submit written arguments on that motion for his consideration. (R. pp. 1284–85.)

Considering the merits of the motion was certainly within a circuit court's power. *See Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002). When the circuit court exercises that power and asks the parties to submit additional written arguments, that instruction is tantamount to forgiving any violation of Rule 59(g). Otherwise, the circuit court would be wasting everyone's time and resources. The circuit court could still deny the motion on the merits (which, of course, it did here, and which, as explained in this brief, it was wrong to do in this case), but denying the motion based on Rule 59(g) at that point makes no sense.

That is particularly so here. Judge John knew about the motion to reconsider within twenty-one days of it being filed, hardly a long time, even if longer than the ten-day window of Rule 59(g). He then ordered briefing about five months later. The purpose of Rule 59(g) was more than satisfied, as any significant delay in deciding the motion was based on an unperfected appeal and then a delay from Judge John regarding his plan for handling the motion, rather than by the eleven extra days for Judge John to receive a copy of the motion to reconsider. (*See* R. pp. 1284–91.)

IV. The circuit court's order finding a willful violation is insufficient.

In any criminal proceeding, a defendant's guilt must be proven "beyond a reasonable doubt." *See, e.g.*, *Battle v. State*, 382 S.C. 197, 204, 675 S.E.2d 736, 740 (2009). That high bar applies in a criminal contempt proceeding too. *Ex parte Cannon*, 385 S.C. at 661, 685 S.E.2d at 824. To satisfy this burden of proof, a court must be able to conclude that a party acted with the intent to violate the order, which is a subjective standard that "must necessarily be ascertained from all the acts, words, and

circumstances surrounding the occurrence." *Id.* In reaching this conclusion, "the record must be clear and specific as to the acts or conduct upon which such finding is based." *Spartanburg Cty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 83, 370 S.E.2d 872, 874 (1988).

To be sure, our appellate courts have never required a circuit court to give an exhaustive justification of its decision. Nor do Palmetto Industrial and Lawhon suggest the Court adopt such a standard now. Even so, a finding of criminal contempt requires something more than a single conclusory sentence like the one here. Whether in a written order or orally from the bench, a circuit court must give some explanation of its finding, showing what particular conduct violated what particular part of an order. *See, e.g.*, *Jackson v. Jackson*, 241 S.C. 1, 15–16, 126 S.E.2d 855, 863 (1962) (affirming a contempt decision found in a "well-considered order" from the circuit judge which "states his inference from the evidence").

For each court in our judicial system to fulfill its appointed role, the circuit court must give this Court something it can actually review—some reasoning, some explanation for its decision—before this Court can decide if the circuit court abused its discretion by making a decision that was not supported by the evidence. Otherwise, an appeal turns into nothing more than this Court deciding in the first instance whether the evidence is sufficient, without knowing what evidence the circuit court found compelling or why the circuit court credited some evidence but not other evidence.

The need for the circuit court to give some explanation for its decision is particularly acute here, when the parties submit conflicting evidence through affidavits alone. When evidence conflicts, it is not possible for "the evidence, on its face, [to] patently support[] a finding of contempt." *Milgroom v. McDaniel*, 308 S.C. 5, 10, 416 S.E.2d 626, 628 (1992). Instead, the trial court must analyze the evidence to decide which side's arguments are more credible.

This role of weighing evidence is nothing new for circuit courts. They serve as finders of fact in myriad situations. In that role, appellate courts typically give circuit courts deference in their findings of facts because circuit courts deal directly with the evidence and witnesses and can judge credibility in a way that never comes through in a black-and-white transcript. *See Menne v. Keowee Key Prop. Owners' Ass'n, Inc.*, 368 S.C. 557, 567, 629 S.E.2d 690, 696 (Ct. App. 2006).

But here, the situation is different. The hearing involved only the arguments of counsel, based on affidavits. (*See* R. pp. 372–421.) The usual reason for deferring to the circuit court's weighing of evidence therefore no longer exists. Because the circuit court never heard a witness testify on the issues raised in Gulfstream's contempt motion, the circuit court here was in no better position to view the evidence that this Court is now.

Thus, when confronted with conflicting evidence (all on paper), the circuit court must give *some* explanation that sets forth why some evidence is credible, other evidence is not, and what allows the court to conclude beyond a reasonable doubt that a party willfully violated an order. Only then can this Court meaningfully decide

whether the circuit court properly exercised its discretion. Requiring such an explanation is nothing new. *See Rawcliffe Resorts, Inc. v. Matt Becker & Assocs., Inc.*, No. 2014-001152, 2016 WL 821187, at *1 (S.C. Ct. App. Mar. 2, 2016) (remanding a case for the court to apply the correct standard for criminal contempt and to "set forth its findings of fact in detail").[4]

Below, the circuit court gave no explanation for its decision, either at the hearing, in its order finding Palmetto Industrial and Lawhon in criminal contempt, or in its order denying the motion to reconsider. (R. p. 418, lines 3–13, 45, 49–52.) The circuit court's order on contempt was a mere three sentences, only one of which was related to its finding. In full, that order stated:

> As to Plaintiff's Motion For Contempt, the Court's ruling is as follows. The Court finds that Defendants have engaged in criminal contempt of court by deliberate and intentional acts by placement of the golf cart which interfered with the proper use of the non-exclusive easement in this matter and was in direct violation of the Court's previous order. Therefore, the Court hereby imposes a fine in the sum of $5,000 to be paid by November 21, 2018 by 5:00 pm to the Georgetown County Clerk of Court's Office.

(R. p. 45.)

The single sentence addressing the court's finding in its written order says *what* action supposedly violated the order, but it does not say explain *why* the court reached that conclusion after reviewing the conflicting evidence. (It also never explained *how* the "proper use" of the easement limited where Palmetto Industrial or

[4] This opinion is admittedly unpublished, so it has no precedential value. *See* Rule 268(d), SCACR. Nevertheless, it demonstrates how this Court has required circuit courts to explain their decisions when it comes to criminal contempt.

Lahown could park.) In other words, the circuit court did not explain why it refused to credit the explanation from Palmetto Industrial and Lawhon that Chris Lawhon was driving the golf cart because his car was in the shop and Chris Lawhon parked near Gulfstream to leave spaces for people using boats at the marina. (*See* R. p. 1114.) Lawhon and Palmetto Industrial also pointed out to the circuit court how Gulfstream parked in the same space as Chris Lawhon and did not always move their cars when deliveries arrived. (*See* R. pp. 1115–20, 1142–45.) Without an explanation for why this evidence was not credible, this Court has no way to review meaningfully the circuit court's evaluation of the evidence to determine whether that evaluation was within the circuit court's discretion. At the very least, the order should be vacated and the case remanded for the circuit court to explain its decision.

CONCLUSION

The circuit court's contempt order should be reversed or, alternatively, vacated.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2019-001446

Case No. 2016-CP-22-00961

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

v.

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

CERTIFICATE OF COUNSEL

I certify that this FINAL BRIEF OF APPELLANTS complies with Rule 211(b), SCACR.

Wm. Grayson Lambert