

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Robin B. Stilwell, Judge of Circuit Court

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SC Court of Appeals

Civil Action No. 2019-CP-23-00269
Appellate Case No. 2020-000438

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc., Respondents.

**MEMORANDUM IN OPPOSITION
TO MOTION TO DISMISS APPEAL BY RESPONDENTS**

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
Tel: (864) 254-9262
wedlakera@mail.com
Appellant (*Pro Se*)

Emily O'Brian, Esq.
Campbell Teague, LLC
16 W. North Street
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
Counsel for Respondents

ADMINISTRATIVE HISTORY - SUPPLEMENT

This Appeal relates to a case which was brought seeking Declaratory Judgment against the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), where Summary Judgment was granted based upon errors of law.

1. On February 20, 2020, a "Form 4" Order (Exhibit 1 to Appellant's Initial Brief) denied Appellant's "Motion for a New Hearing" (MNH).
2. On March 12, 2020 as received by the Court of Appeals, Appellant filed his "Notice of Appeal in a Civil Case".
3. On May 13, 2020 as received by the Court of Appeals, Appellant filed a "Motion Requesting an Order Granting Default Judgment" (MDJ).
4. On May 20, 2020 after being served with Appellant's MDJ, Respondents filed their "Motion to Dismiss ..." (MTD).
5. To date, Respondents have not filed an initial brief. Thus, no "Record on Appeal" (ROA) exists, nor was filing for a ROA made.

FACTS – SETTING THE RECORD STRAIGHT

6. Appellant did appear *Pro Se* in the Hearing of October 28, 2019, and it was with the gracious permission of Judge Stilwell that prior legal counsel was permitted to sit at table, with the understanding he would not coach, nor comment throughout the Hearing. He did not. Counsel for Respondent actually asked Mr. Gibson if he was there as counsel to which he stated he was not. Finally, counsel for Respondent did not object to his sitting next to Appellant, which was done to help Appellant focus on the Hearing and relevant points of law.
7. Appellant properly filed MNH within the period required by Court rules, as MNH was filed on November 18, 2019, 20 days after the Hearing of 10/28/19.

8. No action by the Court had been taken on Appellant's MNH, where Appellant was waiting for a ruling on MNH before filing his Motion to Reconsider or before filing any appeal, since the unresolved MNH had left Appellant in limbo.

9. Counsel for Respondent derogatorily terms Appellant a "serial litigant". After two-terms service as a member of the Board, Appellant has been seeking to bring improvements to WHOA and to provide benefits to its members (Members), where legitimate litigation was brought to stop the Board from alleged-unlawful actions, and with intent to assure proper Board Governance, including mandatory ADR before litigation may be brought, and Board transparency. Any resort to the judiciary came only after concerted efforts to both negotiate and to mediate - and in one case successfully. Most such cases have been brought in the format favored by the Judiciary and the Legislature, *i.e.*, seeking declaratory relief under the South Carolina Declaratory Judgment Act.

ARGUMENTS IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL

A) STANDARD OF REVIEW - APPELLANT'S INITIAL BRIEF

10. May it please the Court to recall from page 5 of Appellant's Initial Brief, which cites a plethora of evidence, that is: much more than a "... mere scintilla ...", which contradicts granting of Summary Judgment, or in this instance the dismissal of a meritorious Appeal:

... Appellant quotes paragraph 1:

1. The Supreme Court of South Carolina reviewed the granting of summary judgment in *Bennett, et. al. v. Carter, et. al.*, Appellate Case No. 2016-000065, under the same standard applied by the trial court under Rule 56(c), SCRCF. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be

drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC, ...* 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Where, as here, the burden is upon Defendants to show a preponderance of evidence warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009).

B) DEMANDS OF JUSTICE - THE DEADLINE IN WHICH TO FILE AN APPEAL WAS TIMELY SATISFIED

11. MNH was timely filed under the undisputed facts and chronology of this case. It would be an injustice for this Court to find that this Appeal was not timely filed, where as here, Appellant was waiting on the Court's response to MNH before filing a Motion for Reconsideration, or an Appeal. There was no prejudice to Respondent by virtue of MNH being filed following the Judge's verbal granting of Summary Judgment, but before his Order was issued.

12. This Court may recall that a hearing for Appellant's MNH never happened, which denied Appellant his right to present pleadings and to be heard to clarify with the Judge the **errors of law** that were used to grant Summary Judgment:

12a) the Order denying Appellant's MNH was not issued until more than three months later
- 94 days - after MNH;

12b) the fact, however, that the Order of February 20, 2020 was issued with **explicit** denial of Appellant's MNH fully counters and annuls Respondent's claim that an **implicit** denial of MNH was contained as part of the Judge's granting of their Motion for Summary Judgment;

12c) the Judge in fact ultimately recognized that Appellant's MNH remained outstanding as shown by the Judge's Order of February 20, 2020 stating:

Furthermore, to the extent that any party may contend that Plaintiff's Motion for a New Hearing filed November 18, 2019, is still pending, the same is denied.

Thus, it was not until February 20, 2020 that the Order denying Appellant's MNH was entered, clearly showing that the Appeal was timely.

13. Appellant's MNH directly related to substantive aspects of the Hearing and granting of Summary Judgment which was based upon **errors of law**, where excerpts from MNH show (emphasis added):

1. In the wake of **Defense Counsel** (Counsel) **learning of inadvertently misleading the Court with the facts**, resulting in an **erroneous-legal conclusion that Defendants are immune from suit** and the granting of Defendants' "Motion for Summary Judgment and to Extend ADR Deadline" (Motion), on October 31, 2019 (Figure 1), **Counsel offered a proposal for a new Hearing:**

"... If further briefing or a rehearing would be of assistance to Your Honor in making this determination, we would certainly be glad to do that as well."

Plaintiff agrees that a *de novo* hearing must be held.

2. On October 30, 2019 (Figure 2), Plaintiff cited His Honor's granting of Motion, based upon a "wrong party" argument, as contrary to a precedent previously set, where a same "wrong party" claim was dismissed, as ruled by His Honor, himself.

4. **Plaintiff moves the Court pursuant to Rule 56(e), SCRPC, to recognize: "... that there is a genuine issue for trial. ...", and to schedule a New Hearing to fully understand.**

9. On October 30, 2019 (Figure 2), a **letter** to the Honorable Judge Robin B. Stilwell was titled: **"... Apparent Error at Law - Lack of Consistent Judgment ..."**, as related to a Hearing statement to grant Defendants' Motion [for Summary Judgment].

10. On October 30, 2019 (Figure 2), Plaintiff respectfully suggested that His Honor's **granting represented an "Apparent Error at Law"**.

11. On October 30, 2019 (Figure 2), ... which was also clarified on November 1 by Plaintiff (Attachment):

"... **Defense Council now concedes Summary Judgment cannot be given** based upon 33-31-834(a) "immunity from suit", since WHOA is not a 501(c)(3) organization – 33-31-834(b)(2). ..."

THEREFORE, for these reasons and such others as may be advanced at any hearing on Plaintiff's Motion, he respectfully prays for the Court to schedule a New Hearing in which Plaintiff will seek an Order DENYING Defendants' "Motion for Summary Judgment and to Extend ADR Deadline".

C) THE JUDGE'S GRANTING OF SUMMARY JUDGMENT DID NOT "EFFECTIVELY DENY" THE MOTION FOR A NEW HEARING

14. It is obvious on its face that MNH was based upon the wrongful and alleged-unlawful granting of Summary Judgment. Such granting was the very reason a New Hearing was needed, which gave rise to the MNH, a necessary motion.

D) THE MOTION FOR A NEW HEARING TOLLED THE TIME TO APPEAL, OR TO FILE ANY-OTHER-RELEVANT MOTION.

15. After passage of time and several inquiries to the Court, it became obvious that the Judge had apparently overlooked Appellant's MNH. Then, and only then, did Appellant file a "Motion to Reconsider".

E) THE APPEAL WAS CORRESPONDINGLY TIMELY FILED, AND MUST BE ALLOWED TO PROCEED IN THE INTERESTS OF JUSTICE TO REDRESS ERRORS OF LAW AND TO PERMIT THE MERITS TO BE ADDRESSED

16. Filed on March 12, 2020 as received by the Court, in a timely manner after the Order of February 20, 2020, Appellant's "Notice of Appeal in a Civil Case" showed:

Raymond A. Wedlake serves this notice of appeal on Counsel for Respondents pursuant to Rule 203, SCACR, within thirty (30) days after receipt of written notice of entry of the "Order Form 4" (Exhibit 1) of the Honorable Robin B. Stilwell, filed in the Public Index on February 20, 2020, which denied Appellant's request for a New Hearing.

F) THUS, THIS COURT HAS SUBJECT MATTER JURISDICTION

17. This Court should not relinquish its subject matter jurisdiction in this *pro se* case, where as here, there was at a minimum, reasonable confusion as to timing for filing, given Appellant's outstanding MNH.

G) FAILURE TO PRESERVE, AS ALLEGED, IS NOT A PROPER GROUND TO DISMISS, WHERE IN ANY EVENT CLAIMS WERE PRESERVED

18. Counsel for Respondent relies upon technical arguments in an effort to Dismiss the Appeal. Even assuming, *arguendo*, that certain issues were not preserved, other issues certainly were preserved, giving this Court sufficient grounds to grant Appellant's Appeal.

H) THE APPEAL HAS SUBSTANTIAL MERIT ON THE NUMEROUS GROUNDS SET FORTH IN APPELLANT'S INITIAL BRIEF

19. The merits of Appellant's-Initial Brief form a basis for why Respondents so urgently seek to dismiss this Appeal, by resorting to technical rules of procedure, while at the same time showing no prejudice to Appellant.

I) ACTION ON A MOTION IS STILL PENDING, WHICH WOULD MAKE DISMISSAL INAPPROPRIATE

20. On May 13, 2020 as received by the Court of Appeals, due to expiration of time for Respondents to file an initial brief, Appellant filed a "Motion Requesting an Order Granting Default Judgment" (MDJ). which showed:

No service of "Brief of Respondents" is known to Appellant. Notice of Appellant's Brief was served to Respondents electronically on April 6, 2020 (Exhibit 1). Thirty days after service of Appellant's Brief was marked on May 6, 2020. No request was made by Respondents for an extension of time to file.

21. Action from the Court on Appellant's MDJ is still pending. Appellant believes that MTD's intent is to circumvent proper process by the Court, and also believes that MTD was brought as a diversionary, and dilatory, tactic since it is groundless and not factual, upon information and belief. Such delaying tactics do not form a legitimate basis for dismissal.

J) RECORD ON APPEAL IS PENDING AT THIS TIME


22. Without Respondents having filed an initial brief, there is no "Record on Appeal".

CONCLUSION

This is an Appeal regarding grant of a Motion of Summary Judgment. It is clear from the face of the Complaint, as well as by the pleadings and the record, that in applying this Court's Appellate Review standard in such cases, Respondent's Motion to Dismiss the Appeal should not be granted. The issue under such standard, is in reviewing *de novo*, and applying the "mere scintilla" of proof test: is there any material issue of fact? In fact, it is respectfully submitted that there clearly are multiple-disputed issues of material fact.

For all reasons stated above, based upon the pleadings and with proper reference to Court rules, and in the overriding interests of justice, Appellant would respectfully state that Respondent's "Motion to Dismiss the Appeal" should be denied. The case should proceed on the merits, where particularly a contention of "... untimely filing ..." is simply not factual. This court does have jurisdiction to review the merits of this Appeal, and it is respectfully submitted the Appeal should be affirmed and remanded to be sure all errors of law as cited by Appellant are redressed. The Appeal has substance, and is not frivolous in nature. There is no showing of prejudice whatsoever to Respondents. It would go against the policy of this Court, if errors of law are allowed to stand, and if legalistic-technical arguments are allowed to prevail where, as here, justice requires that the Appeal proceed.

Dated this 14th day of July, 2020.


Raymond A. Wedlake, Appellant (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Memorandum in Opposition to Motion to Dismiss Appeal by Respondents", was served upon the following:

Emily O'Brian (SC Bar #101824)
Campbell Teague LLC
16 W. North St.
Greenville, South Carolina 29601
Attorney for Respondents

via US Priority Mail, Tracking Number: 9504 5036 9930 0452 9322 00

on July 14, 2020.

Raymond A. Wedlake

Raymond A. Wedlake - Appellant *Pro Se*
703 Creekview Drive, Greenville, SC 29607
(864) 254-9262 wedlakera@mail.com

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