IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Deadra L. Jefferson, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge
Maite Murphy, Circuit Court Judge

Case No.: 2016-CP-18-01706
Appellate Case No.: 2018-002185

Molly M. Morphew, ……. Appellant

v.

Stephen Dudek, Doreen Cross, David Collins,
Allison Williams, First Federal, Michael Scarafile,
Susan Nicholson, Carolina One Real Estate,
Carrie Boyer, and Wooddy Law Firm, …… Respondents

INITIAL BRIEF OF RESPONDENTS STEPHEN DUDEK, DOREEN CROSS, MICHAEL SCARAFILE, SUSAN NICHOLSON AND CAROLINA ONE REAL ESTATE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND COURT RULES

OTHER SOURCES

STATEMENT OF ISSUES ON APPEAL

1. Whether the lower court properly granted the Respondents' motions to dismiss and for summary judgment, when the alleged fraud that forms the basis of the Appellant's underlying complaint was not extrinsic and has been ruled on by this Court in multiple appeals.
2. Whether this Court should consider several of the Appellant's arguments, when those arguments cite to motions and proposed briefs that were explicitly barred by this Court.
3. Whether the lower court's harmless and routine procedural-based decisions amount to reversible error.
4. Whether the record or the other respondents' briefs contain any additional grounds to support the lower court's decisions.

STATEMENT OF THE CASE

This case arises out of yet another one of Appellant Molly M. Morphew's ("Morphew" or the "Appellant") duplicative and resource-taxing attempts to challenge the sale of real property in Dorchester County (the "Property") by Thomas and Lorraine Ferro (collectively, the "Ferros") to Respondents Stephen Dudek and Doreen Cross (collectively, the "Dudeks"). Dating back to 2013, Morphew has filed four overlapping lawsuits involving the Property, and, including the instant appeal, she has been the appellant four separate times. (*Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183; Appellate Case No. 2014-002633; Appellate Case No. 2017-0013963; *Molly M. Morphew v. Stephen Dudek, et al*., Case No.2016-CP-18-1706; Appellate Case No. 2018-002185; *Molly M. Morphew v. Doreen Cross, et al*., Case No. 2017-CP-18-987; Appellate Case No. 2018-000507; *Molly M. Morphew v. Stephen Dudek, et al.*, Case No. 2018-CP-18-1661). The tortured procedural histories of her various lawsuits and appeals

have been described with pin-point precision by one long-standing judge as "a labyrinthine of litigation." (Case No. 2017-CP-18-987, Order, February 21, 2018). Another distinguished judge stated in separate orders, which were recently upheld by this Court, that Morphew "has become so emotionally invested in this case that she cannot 'see the forest for the trees…'" and that her actions "raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross." (Case No. 2013-CP-18-183, Order, June 14, 2017, p. 7, n. 7; Case No. 2013-CP-18-183, Order, May 17, 2017, p. 8, ¶ 13; Appellate Case No. 2017-1393, Opinion No. 2020-UP-151, Order Denying Reconsideration, August 24, 2020).

In the underlying action, Morphew has claimed that the Respondents, and all the respondents, engaged in extrinsic fraud and other wrongdoing leading up to and during trial of the original cases involving the Property, which were consolidated under Case No. 2013-CP-18-183 (collectively, the "Original Action"). (Case No. 2016-CP-18- 1706, Compl., ¶¶ 1-5). (Carolina One, Nicholson, and Scarafile will be referred to collectively as "Carolina One"; the Dudeks and Carolina One will be referred to as the "Respondents").

In the Original Action, both Morphew and the Dudeks both filed for specific performance, each claiming the right to purchase the Property under separate purchase contracts with the then-owners, the Ferros. (Original Action, Morphew Compl, Dudeks Compl.). Trial was held in the Original Action on June 11 and 12, 2014, before the Honorable James E. Chellis. By way of an order issued November 6, 2014, the lower court awarded the Dudeks specific performance ("Specific Performance Order"). (Original Action, Specific Performance Order, November 6, 2014).

There are two pertinent facts that occurred, respectively, before trial in the Original Action and prior to the issuance of the Specific Performance Order: (1) On June 10, 2014, the

day before trial in the Original Action, First Federal, the Dudeks' lender, provided documents in response to a subpoena. (Appellate Case No. 2014-002633, Record, p. 291; Morphew Deposition Tr., Ex. 1; First Federal File and Transmittal Letter); (2) On September 10, 2014, two months prior to the issuance of the Specific Performance Order, the Ferros filed a "Pleading Statement" that outlines alleged instances of fraud that also form the basis of this case. (Original Action, Pleading Statement, September 10, 2014). Despite receiving the First Federal file immediately before trial, continuance was not requested by either party, and trial in the Original Action went forward as scheduled. And at no point after the issuance of the Specific Performance Order did either the Ferros or Morphew file a motion under Rule 60, SCRCP, to set aside the Specific Performance Order based on the First Federal file. They did, however, raise arguments concerning fraud and the First Federal file to this Court in the appeal of the Specific Performance Order. Morphew and the Ferros specifically drew attention to the fact that they received the First Federal file before trial. (Appellate Case No. 2014-002633, Final Brief, p. 10). They then specifically appealed the lower court's handling of the Respondents' testimony, arguing, "the trial court was presented with questionable, false, conflicting and obfuscated testimony associated to material documents and facts of law, and its choice to rely on key witnesses…was unreasonable and warrants reversal by this court." (Id., p. 43; see also Id. at p. 46). This Court considered all arguments, including those arguments concerning fraudulent testimony and the fact that the First Federal documents were provided right before trial, and it upheld the Specific Performance Order. (Appellate Case No. 2014-002633, Opinion No. 17-CP-019). Morphew originally filed a petition for a rehearing, but she voluntarily withdrew the petition and dismissed her appeal. (Id., Pet. to Dismiss Rehearing, Order, February 15, 2017, Remittitur, February 15, 2017).

This Court remitted the case back to the lower court, which then issued two orders, first scheduling the Dudeks' closing on the Property and, second, after closing, holding Morphew in contempt for failing to vacate the Property. (Original Action, Order, May 17, 2017, Order, June 14, 2017). Morphew immediately appealed both the order setting a schedule for the Dudeks to close and the order holding her in contempt for failing to vacate the Property. In that appeal, four of her five issues focused on alleged fraud on the lower court. (Appellate Case No. 2017-1393, Final Brief, pp. 3-4, and, generally). This Court once again considered all of Morphew's arguments and once again upheld the orders of the lower court. (Appellate Case No. 2017-1393, Opinion No. 2020-UP-151, Order Denying Reconsideration, August 24, 2020).

In or around June, 2017, after the lower court ordered Morphew to vacate the Property, the Dudeks took legal and "quiet"[1] ownership and possession of the Property. Simultaneously,[2] Morphew filed a third action related to the Property. (Case No. 2017-CP-18-987, Compl.). In that action, Morphew alleged that the Dudeks engaged in fraud upon the court in the Original Action, amounting to causes of action for abuse of process and fraud. (Id. at pp. 4-10). The lower court dismissed that action by way of an order dated February 21, 2018. (Case No. 2017-CP-18-987, order, February 21, 2018). Morphew appealed that Order, again arguing that the lower court overlooked the fraud upon the court in the Original Action. (Appellate Case No. 2018-000507, Final Brief, pp. 16-21, 24-25). This Court again considered Morphew's arguments and again upheld the lower court's decision. (Appellate Case No. 2018-000507, Opinion No. 20-UP-150).

[1] As quiet as one can possess a home while being forced to defend duplicative lawsuits and appeals related to the purchase of that home.

[2] As in the same day. Morphew filed the complaint in the 2017 action the same day hearings were heard on the Dudeks' motion in the Original Action to compel Morphew to vacate the Property. It appears that she came to the hearing with knowledge of the forthcoming result and a new complaint in her possession.

In 2018, Morphew filed a fourth case against the Dudeks in which she has asserted an alleged right to an easement across the Property. (Case No. 2018-CP-18-1661, Amended Compl.). For good measure, she included a cause of action for ownership of the Property, claiming that the Dudeks obtained it through fraud. (Id. at pp. 19-20).

Turning back to the instant underlying action after a full historical recount, on or about August 24, 2016, Morphew brought eighteen overlapping causes of action, sixteen of which were asserted against some or all of the Respondents. (Case No. 2016-CP-18-1706, Compl.). The lower court issued two separate orders dismissing a majority of the causes of action against the Respondents. (Case No. 2016-CP-18-1706, Order Partially Dismissing Carolina One, January 31, 2017, Order Partially Dismissing the Dudeks, January 31, 2017). After those orders were issued, the only remaining cause of action against the Dudeks was Morphew's seventeenth cause of action for intentional infliction of emotional distress. There remained four causes of action against Carolina One: Morphew's first cause of action for extrinsic fraud, her seventh cause of action for bad faith and unfair dealings, her seventeenth cause of action for intentional infliction of emotional distress, and her eighteenth cause of action for tortious interference with existing contractual relations.

The case then proceeded into discovery, before its ultimate disposition in November, 2018. For a period in excess of two years, there was only a single deposition taken – the deposition of Morphew by all the respondents in this appeal. (Morphew Depo. Tr., January 16, 2018). In her deposition, Morphew admitted that she simply wants proof warranting the award of specific performance in the Original Action and, if provided, she would "back off and [be] done" (i.e., she filed this action without proof of any fraud actually committed in the Original Action). (Id. at pp. 33-35). Morphew further admitted throughout her deposition that the

information forming the basis of this action, the First Federal file, was made available to her and all counsel prior to trial in the Original Action and was further used in her appeal in the Original Action. (Id. at pp. 37-42, 44, 54-56, 80, 97-98, and 101-102). And in discussing Doreen Cross in particular, Morphew was asked, "[s]o anything post-trial that you've discovered or learned or seen that makes her testimony false or fraudulent that you didn't have before the trial or during the trial?" (Id. at p. 114:9-12). Morphew responded definitively and without qualification, "[n]o." (Id. a p.114:13).

Based on Morphew's deposition, in which she admitted that her case was based on information known to her in the Original Action and on issues already decided by this Court, the Respondents moved for summary judgment, which was granted on November 15, 2018. (Memo in Support of S.J., May 29, 2018; Order Granting S.J., November 15, 2018). This appeal followed.

STANDARD OF REVIEW

The Respondents adopt by reference the portions of the other respondents' briefs concerning standards of review.

ARGUMENTS

In the Original Action, Morphew was represented by a well-respected trial lawyer, who, like any great trial lawyer at some point in his or her career, faced an adverse ruling. Morphew ultimately elected to appeal that decision *pro se,* triggering a tail spin of litigation and appeals that has been a drain on the well-being of the Dudeks, on the finances of all parties involved, and on the overall efficiency of the judicial system. This is not an indictment on a person's right to be a *pro se* party. Morphew has navigated the process, and she has seen multiple cases and

appeals to a conclusion. Instead, the indictment is on her repeated attempts to relitigate the same issues.

In this appeal, Morphew has identified twenty-three issues, seventeen of which concern the Respondents. (Appellants' Initial Brief, Issues 1, 5-11, 13-16, 18-20, and 22-23).

Arguments under issues 1, 8 through 11, 13 through 14, and 23 are predicated on alleged fraud that was known to Morphew before trial in the Original Action and that has already been ruled on this Court. Arguments under issues 15 through 16, 18 through 20, and 22 cite to and reference Morphew's original initial brief, which exceeded page restrictions by 170 pages and which was barred by this Court. Those argument should not be considered by this Court.

The remaining arguments, 5 through 7, are procedural in nature and do not assert reversible error on the part of the lower court.

I. THE LOWER COURT DID NOT ERR IN GRANTING THE RESPONDENTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT, WHEN THE ALLEGED FRAUD THAT FORMS THE BASIS OF THE APPELLANT'S UNDERLYING COMPLAINT WAS NOT EXTRINSIC AND HAS BEEN RULED ON BY THIS COURT IN MULTIPLE APPEALS.

In the first paragraph of her complaint filed in this action, Morphew sets out the purpose of the lawsuit, stating, "[t]his is an action for fraud, and specifically fraud on the courts…" (Compl, ¶ 1). Her first case of action is for extrinsic fraud. (Id. at p. 13-16). And the arguments that this Court can consider are predicated on fraud. (Appellant's Initial Br., p. 1, Argument 1 (arguing that the Specific Performance order is void because it was "procured by fraud"); (Appellant's Initial Br., p. 22, Argument 8) (arguing that "[i]n the current action, Appellant

asserts intentional fraud as the basis for interference."); (Appellant's Initial Br., p. 22, Argument 9) (arguing, "[f[irst, as argued herein Brief, extrinsic fraud exists…"); (Appellant's Initial Br., p. 25, Argument 10) (arguing that "[t]he Dudeks prior and continuing fraud is directly related to their own critical breach); (Appellant's Initial Br., p. 25, Argument 11) (arguing that the lower courts dismissal of her extrinsic fraud claim was improper); (Appellant's Initial Br., p. 29, Argument 13) (arguing, "without the fraud committed, the lower court would not have had the inherent power or jurisdiction to rule specific performance in favor of the Dudeks."); (Appellant's Initial Br., p. 31, Argument 14) (arguing that "[w]ithout the perjury, misrepresentations, false promise(s), and concealment the Dudek's would fail all conditions precedent to lawfully compel specific performance…"); (Appellant's Initial Br., pp. 45-46, Argument 23) (arguing, "[i]f not for these violations and fraudulent conduct of the Respondents…there would never have been a trial…").

With respect to the substantive issues that can be considered by this court (1, 8 through 11, 13 through 14, and 23), the threshold question, then, is whether there existed extrinsic fraud in the Original Action. Without extrinsic fraud, Morphew's case and this appeal fail.

Extrinsic fraud is based on language found in Rule 60, which states in pertinent portion, "[t]his rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." Rule 60(b), SCRCP. The South Carolina Supreme Court examined the rule and stated, "[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on

the court." *Chewning v. Ford Motor Company*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Rozier v. Ford Motor Co*., 573 F.2d 1332, 1338 (5th Cir.1978)). The *Chewning* Court went on to distinguish between intrinsic and extrinsic fraud, holding,

> Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Intrinsic fraud, on the other hand, is fraud which was presented and considered in the trial. *Hagy v. Pruitt*, 339 S.C. 425, 529 S.E.2d 714 (2000). It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. *Hilton Head Ctr. v. South Carolina Pub. Serv. Comm'n, supra*. Perjury by a party or a witness is intrinsic fraud. *Rycroft v. Tanguay*, 279 S.C. 76, 302 S.E.2d 327 (1983).

Id. at 81, 610.

Four years later, the South Carolina Supreme Court discussed the *Chewning* decision and clarified the distinction between extrinsic and intrinsic fraud, holding, "[t]he essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud." *Ray v. Ray*, 374 S.C. 79, 84, 647 S.E.2d 237, 239 (2007). "Extrinsic fraud, as opposed to intrinsic fraud, is often difficult, if not impossible to discover during the litigation. For example, concealing assets through an unknown third-party not subject to discovery is extrinsic fraud in that it constitutes conduct or activities outside of the court proceedings which deprive the other party of the opportunity to fully exhibit and try his case." *Id.* at 84-85, 240 (citing 24 Am.Jur.2d Divorce and Separation § 435 (1998); *Chewning*, 354 S.C. at 81, 579 S.E.2d at 610).

The *Chewning* decision and further explanation by the *Ray* court expose the incurable issue with Morphew's case. She has labeled the Respondents' testimony as "perjury," an act

explicitly identified as intrinsic fraud, not extrinsic fraud. (Appellant's Initial Br., pp. 30-31); *Chewning* at 81, 310. Equally as damaging, she admitted throughout her deposition that this case is based on evidence found in the First Federal documents, provided to her counsel prior to trial in the Original Action. (Morphew Tr., pp. 37-42, 44, 54-56, 80, 97-98, 101-102, and 114). Not only was this supposed fraud discoverable in the Original Action, it was in fact discovered by Morphew and her counsel prior to trial, when First Federal transmitted its responses to Morphew's subpoena. Morphew could have asked to continue the trial based on the First Federal file, but she did not, and she proceeded through trial, and an appeal, with full knowledge of the First Federal file and all the fraud it could have revealed. Assuming that any fraud does exist, which is denied, it was intrinsic, requiring this Court to uphold the lower court's decisions.

Furthermore, even if extrinsic fraud existed, then Morphew's relief would be a set-aside of the Specific Performance Order and a retrial of the Original Action, not independent damages against the Respondents. Rule 60, SCRCP. Respondents Allison Williams and First Federal point out this issue in their brief, which is adopted by reference. (Williams Initial Br., p. 10).

Morphew's case, and the above-referenced arguments, also fail under the law-of-the-case doctrine, precluding a party "'from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.'" *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct.App. 2015) (quoting *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009)). Neither Morphew nor the Ferros filed a motion to set aside the Specific Performance Order based on fraud, despite having the First Federal file and the Ferros filing the Pleading Statement, outlining supposed fraud. But, in two separate appeals, Morphew challenged three separate orders in the Original Action. (Statement of the Case with citations to the Record, *supra*, pp. 2-4). In those

appeals, she raised the same issues now on appeal, and this Court upheld all the challenged orders. (Id.). And in her 2017 case, Morphew filed a complaint alleging the same fraud, which was dismissed by the lower court and upheld by this Court. (Id.). Any issues related to fraud in the Original Action have been decided multiple times and now the law of the case.

Lastly, as to the Dudeks, Morphew's claims are also barred by *res judicata*. To establish *res judicata*, the following elements need to be shown: "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Riedman Corp. v. Greenville Steel Structures*, Inc., 308 S.C. 467, 469 419 S.E.2d 217, 218 (1992). "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). "Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.*

It cannot be disputed that the Original Lawsuit, along with the 2017 suit filed against the Dudeks, involve the same parties, and the identity of the subject matter – the Property and alleged fraud – is identical. Both of those cases have been fully litigated, with decisions of the lower court being upheld by this Court.

For all of these reasons, this Court should uphold the orders of the lower court.

II. THIS COURT SHOULD NOT CONSIDER SEVERAL OF THE APPELLANT'S ARGUMENTS, WHEN THOSE ARGUMENTS CITE TO MOTIONS AND PROPOSED BRIEFS THAT WERE EXPLICITLY BARRED BY THIS COURT.

Arguments under issues 15 through 16, 18 through 20, and 22 cite to and reference Morphew's original initial brief, which exceeded page restrictions by 170 pages and was barred

by this Court. (Appellant's Initial Br., pp. 32, 34, 38, 40, 41, and 43). In these arguments, Morphew cites to her "2nd Motion to Exceed Brief Page Limit," specifically her original initial brief, which was 229 pages long and was attached to the motion. (Id.). This Court denied that motion and instructed Morphew to file brief that does not exceed fifty pages. (Appellate Case No. 2018-002185, Order, October 15, 2019). Morphew has included the motion and non-compliant brief in her designation of matter. (Appellant's Designation of Matter, No. 2). She then cites to it in the above-referenced sections, despite being ordered that her brief cannot exceed fifty pages. For these reasons, this Court should not consider the above issues or arguments with respect to not only the Respondents but all respondents in this appeal.

III. THE LOWER COURT'S HARMLESS AND ROUTINE PROCEDURAL-BASED DECISIONS DO NOT AMOUNT TO REVERSIBLE ERROR.

The Appellant's remaining arguments are under issues 5 through 7, which are procedural in nature and do not identify any reversible error on the part of the lower court.

First, under argument five, it is unclear what Morphew is arguing, but it appears she is taking issue with the fact that one judge partially denied the Respondents' motions to dismiss, then another judge granted the Respondents' motion for summary judgment on the same causes of action. (Appellant's Initial Br., pp. 16-18). If this is her argument, it is without merit, as the motions would have been reviewed under different standards of review.

Second, under argument six, Morphew argues that summary judgment was inappropriate, because discovery was ongoing. (Id., pp. 18-20). By the time the motions were granted, the case was more than two years old. Morphew had not taken a single deposition, despite having had ample time to conduct discovery. The reality is this: No amount of discovery would have saved Morphew's case, because there is no information to substantiate her claims, a fact she admitted

in her deposition. She stated, "show me [proof that the Dudeks were entitled to specific performance in the Original Action], and I will back off and I'm done. Put the cards on the table." (Morphew Deposition Tr., p. 34). By her own admissions, Morphew did not have the "cards" to win the hand. This repetitive attempt to relegate the Original Action, quite simply, should not have been brought.

Lastly, under argument seven, Morphew argues that Carolina One's motion to dismiss was unsupported by arguments, thus it did not comply with the rules. (Appellant's Initial Br., p. 20-21). To the extent this was an error, it was harmless, as Morphew wrote a ten-page memorandum in opposition to the motion, and the lower court held extensive oral arguments on the motions. (Appellant's Memo, October 4, 2016; Motion to Dismiss Hearing Tr.).

IV. THIS COURT SHOULD AFFIRM THE ORDERS OF THE LOWER COURT FOR ANY REASON FOUND IN THE OTHER RESPONDENTS' BRIEFS AND ANY ADDITIONAL GROUNDS APPEARING IN THE RECORD.

Many of Morphew's arguments are aimed at all the respondents. The Respondents adopt by reference the briefs of all the respondents, and they ask this Court to affirm the lower court's orders for any reasons found in those briefs.

Further, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. "Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)." Rule 208(b)(2), SCACR. As the prevailing parties, the Respondents would request that this Court affirm the orders of the lower courts for any grounds appearing in the record.

By way of one possible example, the above-referenced case filed by Morphew in 2018 is indicative of just how convoluted Morphew's arguments have become. In that action, Morphew, as the former [3] owner of a parcel adjacent to the Property, claimed an express easement across the Property. (Case No. 2018-CP-18-1661, Amended Compl., ¶¶ 87-89). She alleged that the source of the express easement is the Dudeks' purchase agreement at issue in the Original Action. (Id.; Id. at Ex. C). This is the very same contract that Morphew claims in her various actions and appeals is invalid and should not have been subject to specific performance in the Original Action, due to the Respondents' fraud on the court. In other words, the supposed invalidity of this original contract is the source of Morphew's endless litigation and appeals. Despite years of contesting the contact, including in this appeal, where she seeks to declare void an order requiring enforcement of the Dudeks' purchase contract, she has now simultaneously taken the position that the same purchase contract creates an express easement in her favor. This is Morphew picking and choosing when the contract is beneficial to her, amounting to judicial estoppel. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997) (holding that the doctrine of judicial estoppel "punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. It is certainly conceivable that parties may want to present novel legal theories, which may require changing one's previous legal theory. However, the truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence.").

[3] She sold the adjacent parcel in 2020 but continues to fight four cases and appeals from across state lines.

CONCLUSION

For all of the of the above reasons, for all the reasons set forth by the lower court, for all the reasons set forth in the briefs of the other respondents, and for any ground appearing in the record, this Court should affirm the orders of the lower court.

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CERTIFICATE OF SERVICE OF INITIAL BRIEF AND DESIGNATION OF MATTER OF RESPONDENTS STEPHEN DUDEK, DOREEN CROSS, MICHAEL SCARAFILE, SUSAN NICHOLSON AND CAROLINA ONE REAL ESTATE

I certify that, on the date indicated below, I served the above Respondents' Initial Brief and Designation of Matter by United States Mail, postage prepaid, or via email, where appropriate under current coronavirus standing order, on the following:

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