

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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

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

Raymond A. Wedlake, as a Member of the 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.

REPLY BRIEF OF APPELLANT

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November 23, 2020

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I. STATEMENT OF THE ISSUES ON APPEAL

A) Respondent's Brief Erroneously States Two Issues on Appeal

The primary issue on appeal relates to "... granting of Summary Judgment (SJ) ...". With intent to obfuscate and to mislead, based upon information and belief, where all Officers of the Law are sworn **not** to mislead pursuant to the "South Carolina Lawyer's Oath", the "Initial Brief of Respondents" (BOR) attempts to obfuscate and to mislead. Appellant asks this Court not to be misled, and to remain focused on the fact that SJ was granted based upon Errors of Law.

BOR erroneously states two issues on appeal (emphasis added):

1. Whether the Circuit Court's February 20, 2020 order properly denied Appellant's December 26, 2019 **Motion For Reconsideration** under South Carolina Rule of Civil Procedure 59(e) **as untimely** where Appellant's Motion was filed 31 days after entry of the Order which it sought to Reconsider.
2. Whether the Circuit Court abused its discretion in denying Appellant's November 18, 2019 Motion For New Hearing.

Both issues attempt to mislead. The first issue tries to misdirect focus upon (emphasis added)

"... Order properly denied Appellant's December 26, 2019 **Motion for Reconsideration** ... as **untimely** ...". Similarly, the second issue tries to misdirect focus upon (emphasis added)

"... abused its discretion in denying Appellant's November 18, 2019 **Motion for New Hearing**. ...".

Neither of these issues are generic as related to this Court's assessing if **Errors of Law** improperly and erroneously led to the granting of Summary Judgment.

Indeed, a third Argument shows admission that (emphasis added): "... stated Issues On Appeal and relief sought **all relate solely to the MSJ** [Motion for Summary Judgment] **Order** ..." as found in "Motion to Dismiss Appeal by Respondents":

3. Appellant's appeal should be dismissed in its entirety as his stated issues on appeal and relief sought **all relate solely to the MSJ Order**, which has not been timely appealed.

B) This Court's Order of 09/21/20 Denied All Claims of "Untimely"

This Court previously **DENIED** all of Respondent's "... untimely ..." claims, where the Order (Exhibit RB.1) plainly stated: "... Appellant timely filed this appeal from the circuit court's February 20, 2020 order, ...", with the Order showing (emphasis added):

Respondent's motion to **dismiss this appeal is denied** because **Appellant timely filed** this appeal from the circuit court's February 20, 2020 order, which denied Appellant's motion to reconsider as untimely and separately denied Appellant's previous motion for a new hearing.

Denial of Respondent's motion to dismiss this appeal is, by itself, sufficient grounds for this Court to reverse the granting of SJ, and to remand.

BOR attempts to change the plain meaning of this Order to refocus upon other motions, with obfuscation and misdirection. The Order statement simply noted content that was referenced, in paraphrase, to actual-earlier-Order content (Exhibit 1), which showed (excerpted, emphasis added):

This matter comes before the Court, ostensibly, pursuant to a **Motion to Reconsider** filed December 26, 2019, by the Plaintiff. Plaintiff asks this Court to reconsider its **Order Granting Summary Judgment** entered November 26, 2019. Plaintiff's motion is respectfully **denied** as without merit and **not properly before this Court**.

Rule 59(e) of the SCRCPC provides that a Motion to Alter or Amend "must be served not later than 10 days after receipt of written notice of the entry of the order." The **filing of the Motion is untimely** as it is significantly outside of the 10 day requirement for filing and service under the rule. ...

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**.

Consequently, Appellant finds BOR content as immaterial, impertinent or scandalous matter, which must be stricken pursuant to Rule 12(f), SCRCPC; BOR shows (bold emphasis added):

- On May 15, 2020, Respondents moved to dismiss Appellant's appeal as untimely. This Court issued an Order on September 21, 2020 denying the motion **but clarifying that the denial was "because** Appellant timely filed this appeal from the circuit court's *February 20, 2020 order*, which **denied**

Appellant's **motion to reconsider** as untimely and separately denied Appellant's previous **motion for a new hearing**." (emphasis added).

C) Res Judicata Bars Respondents from Litigating the Same Issues Again

Res Judicata does not allow Respondents to litigate, again, the same issues. BOR in the Argument Section lists three issues, all of which cannot be tried again. Moreover, BOR seems to want to focus on their-stated issues, but then expounds upon all sorts of irrelevant, immaterial, impertinent or scandalous matter, which must be stricken from BOR pursuant to Rule 12(f), SCRPC. Issues as stated in "Initial Brief of Appellant" (BOA) were focused on the granting of Summary Judgment, based upon errors of law (admitted to in "Motion to Dismiss Appeal by Respondents"). BOR shows (emphasis added)::

- A. The Circuit Court properly **denied** Appellant's December 26, 2019 **Motion to Reconsider** as **untimely**.
- B. The Circuit Court acted well within its discretion in **denying** Appellant's **Motion for New Hearing**.
- C. Appellant's presented issues on appeal cannot be considered by this Court as this **Court does not have jurisdiction** in this appeal over the MSJ Order granting Summary Judgment in favor of Respondents.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court AFFIRM the circuit court's February 20, 2020 MTR [**Motion to Reconsider**] Order and **deny review** of any **other orders** not properly before this Court.

"Motion to Dismiss Appeal by Respondents", which was previously **DENIED**, showed (emphasis added):

- 1. This **court lacks subject matter jurisdiction** because Appellant did not meet the deadline to appeal.
- 2. Because Appellant's rule 59(e) motion was **not timely** filed, it was incapable of staying the time to file a Notice Of Appeal.
- 3. Appellant's appeal should be dismissed in its entirety as his stated issues on appeal and relief sought all relate solely to the **MSJ Order, which has not been timely appealed**.

CONCLUSION

This appeal must be dismissed for **lack of jurisdiction** as Appellant (1) **did not file a notice of appeal within 30 days** of the MSJ Order, (2) did not

stay his time to file a notice of appeal by **filing a timely motion for reconsideration** within 10 days of the MSJ Order, and (3) **did not present any issues on appeal** or relief sought that are **unrelated to the MSJ Order**. Therefore, this **court does not have jurisdiction** to review the merits of this appeal, and the appeal should be dismissed in its entirety with prejudice.

In comparison to claims already **DENIED** resulting from “Motion to Dismiss ...”, it is clear that reference to other motions, with claims of “... not timely ... not been timely ...” appealed were **DENIED** as a result of the Order 09/21/20 (Exhibit RB.1). Thus, *Res Judicata* precludes their being heard again. Similarly, another claim cannot be tried again: “... MSJ [Motion for Summary Judgment] Order, which has not been timely appealed. ...”, because such claim was found in the “Motion to Dismiss ...” and therefore was also **DENIED**. Additionally, claims about “... lack of jurisdiction ...” and “... court does not have jurisdiction ...” cannot be brought again, as jurisdictional claims were found in “Motion to Dismiss ...”, and were therefore also **DENIED** resulting from the Order (Exhibit RB.1).

II. STATEMENT OF THE CASE

A) Appellant’s-United-States-Constitutional Rights were denied by Summary Judgment Being Granted

BOA is supported by a verified Complaint, with its numerous evidentiary Exhibits, and Affidavit. Plaintiff reiterates content from BOA, which showed (excerpted):

Appellant cites the “Constitution of the United States”, Amendment 14, as related to denial of his rights as a US citizen, where the granting of SJ left unresolved the DJ [Declaratory Judgment] issues brought by his case. Thus, Appellant did not receive due process to resolve his DJ issues, nor enjoy equal protection of the laws, since now Respondents feel empowered to withhold any, and all, requested information, where certainly items specifically listed in the NPCA [South Carolina Nonprofit Corporation Act of 19994] must be provided, whereas no information whatsoever has been provided to Appellant. ...

4. Appellant's US Constitutional guarantees were denied, where rightfully Appellant should enjoy “due process” and “equal protection of the laws” as is the right of, and must be provided to, all US citizens;

B) Brief of Respondents Confirms Genuine Issues of Material Fact

With even one genuine issue of material fact existing, then SJ cannot be granted. Several statements confirm genuine issues of material fact as found in BOR (emphasis added):

- On October 31, 2019, counsel for Respondent sent an unfiled email to Judge Stilwell clarifying **an issue of fact** from the hearing.

This Court's appellate review of the MTR Order is pursuant to an "abuse of discretion" standard. "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are **based on unsupported factual conclusions.**" Carson v. CSX Transp., Inc., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

("An abuse of discretion arises where the judge issuing the order was controlled by an **error of law or where the order is based on factual conclusions that are without evidentiary support.**") (citation and quotation marks omitted); USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)

Even extrapolating beyond the record, the **only factual conclusion** potentially involved in the circuit court's decision to deny a new hearing would be the **circuit court's conclusion that it had all information before it necessary to make a decision on the MSJ without a new hearing.**

III. STANDARD OF REVIEW

Appellate-Case Law Supports Appellant's Position that Existence of a Material Fact Precludes Granting a Motion for Summary Judgment

SJ cannot be granted if even one-genuine issue of material fact exists. This Court can easily conclude upon review *de novo*, that several-genuine issues of material fact exist. If any genuine issue of material fact exists, then SJ was granted erroneously, and with error of law. Several material facts are questions that relate to a jury, and thus are not proper as related to SJ, nor to its granting. Indeed:

When material facts are in dispute, then the case must go to a jury, whether the argument is that ... , *Bell v. Irwin*, 321 F.3d 637 (2003), United States Court of Appeals, Seventh Circuit, February 25, 2003

Appellant reiterates content from pages 5-6 of his “Initial Brief of Appellant”, dated 04/06/20, which speaks to an improper granting of Summary Judgment:

This is an appeal from a denial of Appellant's right to a hearing on his MNH (RIB [Record on Appeal - for Appellant's Initial Brief] 85-89), and thus also an appeal from the Order granting SJ (RIB 4-7). Appellant appeals such granting based upon errors of law, as well as abuse of judicial discretion. From his MOP [Memorandum in Opposition] of 10/23[19] (RIB 66-73), 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), SCRPC. *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), SCRPC. "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).

IV. BRIEF OF RESPONDENTS CONTAINS ERRONEOUS ARGUMENTS

Arguments found in BOR potentially all relate to genuine issues of material fact. A granting of Summary Judgment is improper when even one genuine issue of material fact exists.

BOR Item A erroneously states:

A. The Circuit Court properly denied Appellant’s December 26, 2019 Motion to Reconsider as untimely.

This argument is not generic to Appellant’s appeal from Summary Judgment. Claims of “untimely” cannot stand after Respondent’s “Motion to Dismiss ...” was **DENIED** by Order (Exhibit RB.1) of this Court, under *Res Judicata*. BOA discussed the “trickery” which led to confusion, brought on by the Circuit Court as regards response to, and scheduling of, pending

motions. This related specifically to Appellant’s “Motion to Reconsider”. This Motion was never heard by the Circuit Court - see BOA p. 1, par. 2; and, p. 3, par. 2 .

BOR Item B erroneously states:

B. The Circuit Court acted well within its discretion in denying Appellant’s Motion for New Hearing.

This argument is not generic to Appellant’s appeal from Summary Judgment. References to other motions cannot stand after Respondent’s “Motion to Dismiss ...” was **DENIED** by Order (Exhibit RB.1) of this Court, under *Res Judicata*. Appellant’s “Motion for a New Hearing ...” was never heard by the Circuit Court, and is referenced in BOA p.1, par. 2.

BOR Item C erroneously states:

C. Appellant’s presented issues on appeal cannot be considered by this Court as this Court does not have jurisdiction in this appeal over the MSJ Order granting Summary Judgment in favor of Respondents.

References to “... not have jurisdiction ...” cannot stand after Respondent’s “Motion to Dismiss ...” was **DENIED** by Order (Exhibit RB.1) of this Court, under *Res Judicata*. A “Statement of Issues On Appeal” in BOA showed:

3. The Judge erred in granting Summary Judgment which constituted an abuse of discretion when genuine issues of fact existed.
4. The Judge erred in granting Summary Judgment which prohibited Appellant from enjoying “due process” and “equal protection of the laws” by denying adjudication of questions of law as sought with Appellant's-Declaratory-Judgment (DJ) action, which together, represented an abuse of Judicial Discretion.

where details related to associated Errors of Law were discussed in BOA on pp. 10 – 13 for “3.”, and continued on pp. 14 – 15 for “4.”. Other references to Summary Judgment appear in BOA on p. 4, par. 4 and p. 5, par. 2. “Standard of Review” in BOA made it plain that case precedents were ignored and violated, as related to requirements needed before Summary Judgment can be granted.

V. CONCLUSION

BOR makes every attempt to obfuscate and misdirect the focus away from the primary-appeal issue: granting of Summary Judgment. Plaintiff contends grounds for granting of Summary Judgment were based upon Errors of Law. The focus of this Court must remain upon complete adjudication related to the granting of Summary Judgment. The Court must not be swayed by BOR issues that are not generic to the determination of a wrongful granting of Summary Judgment, thus leading to an Appellate Order to reverse and remand. Justice cannot be served if procedural questions are used to override and to subjugate the primary-appeal issue. Justice cannot be served if other “legal-wrangling” questions are applied to deny an assessment, and a resulting conclusion, that granting of Summary Judgment was done based upon Errors of Law.

Dated this 23rd day of November, 2020.



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CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Reply Brief of Appellant", was served upon the following:

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