IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master-In-Equity

Appellate Case No.: 2020-001006

Sara Gleaton, as Personal Representative of the Estate of Wilton Gleaton, ……..... Appellant,

v.

Orangeburg County, A Political Subdivision of the State of South Carolina, …...….. Respondent.

APPELLANT'S INITIAL REPLY BRIEF

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I. APPELLANT'S SLANDER OF TITLE CLAIM IS NOT BARRED BY SECTION 15-78-60(11) OF THE SOUTH CAROLINA TORT CLAIMS ACT.

Respondent claims that the December 27, 2019 Order ruled that the slander of title claim is barred by S.C. Code Ann. § 15-78-60(11), that Appellant did not appeal from that ruling, and that the Order should be affirmed under the two issue rule. First, the Order specifically states that "[t]he Defendant's efforts were focused on collecting taxes for which they ***may*** be immune from liability." The Order does not provide any further explanation or expound on whether section 15-78-60(11) actually does apply, and if it did, why it would apply. Respondent did not file a Rule 52 or Rule 59, SCRCP, motion seeking clarification of the Master's Order and an affirmative statement that the exception barred Appellant's slander of title claim.

Since neither party previously raised the issue of whether the Order definitively finds that the exception applies to Appellant's claim, any arguments are unpreserved, and the Court is confined to interpreting the Order strictly on its face. *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991). In relying on the plain language of the Order, the inevitable conclusion is that the ruling is ambiguous, the Master made no explicit determination as to whether the exception actually applied, and the statement is merely dicta and not foundational to the Master's Order. To the extent that Appellant, in filing her motion to alter or amend the Order, argued that section 15-78-60(11) did not bar her claim, the argument's purpose was to address any hypothetical scenario in which the exception may have actually applied. Appellant could not have conceded the issue when she did not have the requisite knowledge to admit what the Master intended in stating that the provision ***may*** have limited her liability. Arguing that the provision should not apply is not tantamount to a concession that the Master had definitively ruled that the provision did apply.

Realizing this, Respondent has alternatively proposed that it is raising the argument that section 15-78-60(11) bars Appellant's claim as an additional sustaining ground for the Master's Order. *See I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (finding that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling . . . ."). In the event that the Court should find that Respondent's argument could present an additional sustaining ground for the Master's Order, despite the fact that the Master never definitively held that section 15-78-60(11) barred Appellant's claim, Appellant is clearly entitled to assert counterarguments in her Reply Brief that were not raised in her Initial Brief.[1]

> "[U]nder the present rules, the appellant receives notice of the respondent's additional sustaining grounds through the respondent's brief. *See* Rule 208(b)(2), 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)."); *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (explaining the process for addressing additional sustaining grounds). ***Thus, the appellant may address those additional grounds in the reply brief***."

Jean H. Toal, Amelia W. Walker & Margaret E. Baker, *Appellate Practice in South Carolina* 436 (3d ed. 2016) (emphasis added).

Respondent cites *H & K Specialists v. Brannen*, 340 S.C. 585, 532 S.E.2d 617 (Ct. App. 2000), to support its argument that section 15-78-60(11) acts as a complete bar to Appellant's slander of title action. In doing so, Respondent relies on language from *Brannen* to assert that the exception is meant to afford the governmental entity protection from liability to all persons who

[1] Permitting Respondent to raise section 15-78-60(11) as an additional sustaining ground would be far more equitable than precluding Appellant's previously raised arguments under the two issue rule when Appellant has previously contested the applicability of the provision. Further, while the Court may be precluded from addressing 15-78-60(11) since it wasn't explicitly ruled on by the Master and no party made a Rule 59(e) motion to obtain a ruling, there is nothing to prevent the Court from addressing the provision as an additional sustaining ground for the Master's Order when raised by Respondent.

have lost property because of a faulty tax sale. (Resp't's Initial Br. at 7). Respondent's interpretation of *Brannen* is misleading and presents an inaccurately broad reading of the scope of section 15-78-60(11).

In *Brannen*, the purchaser of property sold at a flawed tax sale brought an action to recover the purchase price plus interest against Beaufort County after the tax sale was set aside for lack of proper notice. *Brannen*, 340 S.C. at 586, 532 S.E.2d at 618. The County mistakenly refunded the money to the delinquent taxpayers instead of the purchaser. *Id.* The Beaufort County Master-in-Equity found that Beaufort County was immune from liability pursuant to section 15-78-60(11), which grants immunity for losses resulting from the "assessment or collection of taxes or special assessments or enforcement of tax laws." *Id.* at 586-87, 532 S.E.2d at 618. The Court reversed the Master's holding. *Id.*

The Court stated that to be immune, the loss would have had to have been the ***direct*** result of Beaufort County's assessment or collection of taxes or enforcement of tax laws. *Id.* at 587, 532 S.E.2d at 619. After considering that the loss in *Brannen* resulted from the refund of the purchase price after a tax sale had been set aside, the Court concluded that the loss arose from an act that was separate and distinct from the assessment, collection or enforcement of tax laws against the taxpayer. *Id.* In other words, the purpose of the immunity provision is to provide immunity to suit against taxpayers who lose property because of a faulty tax sale, and "not to shield the entity from liability for refunding money to the wrong party." *Id.*

Likewise, Respondent's actions which gave rise to Appellant's slander of title claim are clearly distinct and separate from the assessment, collection, and enforcement of tax laws. Appellant is not the delinquent taxpayer against whom Respondent was seeking to collect and enforce tax laws. Appellant's slander of title claim is separate from and indirectly related to the

February 7, 2000 flawed tax sale against Debra Foxworth. It directly arises from Respondent's erroneous decision to deed Appellant's property back to the delinquent taxpayer, Debra Foxworth, ***six and a half years after the tax sale had been performed***. The basis of Appellant's claim is predicated on this separate and distinct wrongful conduct, which is analogous to the refunding of money to the wrong party in *Brannen*. Placing the deed back in Ms. Foxworth's name was not part of "the process" of collecting delinquent taxes.

Contrary to Respondent's assertion, the exception does not provide immunity for all damages that occur "because of a faulty tax sale." (Resp't's Initial Br. at 8). Such an interpretation of the rule would protect governmental entities for all sorts of acts which occur after a faulty tax sale, no matter how tenuously they are connected to the actual enforcement and collection of taxes. If *Brannen* stands for anything, it is the proposition that a governmental entity can be liable for subsequent remedial acts after a flawed tax sale if they are performed incorrectly and harm a third party other than the delinquent taxpayer. Respondent's logic is clearly antithetical to the holding from *Brennan* and consequently unavailing. The Court may reverse the Master's Order, as Respondent is not immune to liability under the Tort Claims Act.

II. THE MASTER DID NOT HAVE DISCRETION TO MODIFY OR AMEND HIS WRITTEN AND FILED DECEMBER 31, 2014 ORDER.

Respondent characterizes the Master's December 31, 2014 "Final Order" as an amenable and nonbinding interlocutory order, leaving the Master free to change his mind and reconsider the Order over five years later. A close inspection of the Form 4 accompanying the judgment demonstrates that the December 31, 2014 Order was intended to be a final order. The Form 4, submitted by counsel for Respondent, Jerrod A. Anderson, indicates that a decision had been reached by the Master after being tried or heard, and that the Order ended the case. (Dec. 31, 2014 Order). Neither party filed a motion to alter or amend the judgment. The December 31, 2014 Order

finds that the delinquent tax sale and subsequent quitclaim deed were derogatory to Appellant's title. The Master's December 27, 2019 Order contradicts the December 31, 2014 Order in finding that Respondent's actions were not derogatory to Appellant's title.

As a general rule, an unchallenged ruling by a lower court is considered the law of the case and cannot be challenged on appeal. *Burton v. Cnty. of Abbeville*, 312 S.C. 359, 363, 440 S.E.2d 396, 398 (Ct. App. 1994). However, trial courts are not bound by prior oral rulings, and may issue written orders which conflict with prior oral rulings. *Miller v. Miller*, 375 S.C. 443, 462 n.3, 652 S.E.2d 754, 764 n.3 (Ct. App. 2007). "Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly." *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001). Courts may also alter or amend a ruling upon timely motion by either party, or by the *sua sponte* reversal of an order within ten days of the judgment. *Heins v. Heins*, 344 S.C. 146, 157, 543 S.E.2d 224, 229 (Ct. App. 2001); Rule 59(d), SCRCP.

None of these exceptions to the general rule are present in this matter. The Master's December 31, 2014 Order was written and filed as a final order. Neither party appealed or otherwise challenged the Order, which found that the aforementioned conduct was derogatory to Appellant's title. Furthermore, the Master's December 27, 2019 Order, which contradicts the Master's prior Order, was not issued until almost five years after his prior Order. As such, the December 31, 2014 Order was a binding adjudication, and the Master did not have the discretion to alter or amend the ruling, making his previous legal conclusions the law of the case. Respondent cites to numerous authorities supporting the proposition that a trial court may amend interlocutory orders; however, none of the authorities support that a trial court may *sua sponte* alter or amend an unchallenged written order, final or interlocutory, almost five years after it was filed. Since the

latter Order contradicts specific conclusions of the prior Order and contains untimely amendments, it constitutes an error of law, necessitating a reversal of the Master's Order.

III. THE ISSUE OF WHETHER THE MALICE ELEMENT OF A SLANDER OF TITLE CLAIM ENCOMPASSES STATEMENTS MADE WITHOUT LEGAL JUSTIFICATION, RATHER THAN A CONSTITUTIONAL ACTUAL MALICE STANDARD, IS PRESERVED FOR REVIEW.

During the September 17, 2014 hearing, after Appellant's evidence Respondent moved the Master for a directed verdict. (Sep. 17, 2014 Hr'g Tr. 60:17-19). Appellant asserted to the Master that the malice requirement of a slander of title action may be satisfied by demonstrating that a publication was made without legal justification, as opposed to a constitutional actual malice standard requiring recklessness or the wanton disregard of another's rights.[2] (Hr'g Tr. 63:17-64:4). Counsel for Appellant summarized by stating that the conduct at issue in this action did not meet the definition of actual malice, as it was not intentional. (*Id.* at 64:5-12). Instead, it was proposed to the Master that the conduct encompassed the publication of a statement without legal justification, supporting Appellant's claim for slander of title without the necessity of proving actual malice. (*Id.*). The Master denied Respondent's motion for a directed verdict. (*Id.* at 65:21-23).

In order to preserve an issue from trial for appellate review, an issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). Appellant clearly and specifically raised these issues to the Master at the hearing. Appellant did not receive an adverse ruling on

[2] A party need not use the exact name of a legal doctrine in order to preserve the issue for appellate review, so long as it is clear the argument was presented on that ground. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010).

these arguments until the Master's December 27, 2019 Order, which found that Appellant was required to and did not prove actual malice by a preponderance of the evidence. Thus, the issue of whether the malice requirement for a slander of title claim may be satisfied by a showing of (1) actual malice or (2) a publication without legal justification is preserved for the Court's review.

Appellant should not have been required to prove by a preponderance of the evidence that Respondent acted with a consciousness of wrongdoing or intent to harm, and it was error for the Master to fail to consider whether there was a preponderance of evidence demonstrating that Respondent acted without legal justification. The heightened constitutional actual malice standard set forth in *New York Times Co. v. Sullivan* was created to protect the First Amendment interests of those who publish false statements concerning public officials and public figures in matters of public concern. *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 468, 629 S.E.2d 653, 666 (2006). Thus, the Supreme Court of South Carolina has relaxed the standard and held that the malice requirement in a slander of title action may also be satisfied by showing the publication was made without legal justification. *Huff v. Jennings*, 319 S.C. 142, 150, 459 S.E.2d 886, 891 (Ct. App. 1995).

Here, Appellant and the decedent are private citizens who had the value of their property diminished by false deeds recorded by Respondent. There is no evidence in the record supporting that any of Respondent's actions had a legal basis or were authorized by statutory authority. *See Rives v. Bulsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996) (finding that failure to give the required notice is a fundamental defect in the tax proceedings which renders them void). There is no legal justification for a delinquent tax sale when a defect with the proceedings has rendered the sale void before it has even occurred. More importantly, Respondent can cite no authority and has not produced any evidence supporting the notion that there is a factual or legal

basis for quitclaiming a deed into a delinquent taxpayer's name after the property has already been legitimately bought and recorded by a third party. It was error for the Master to misapply the malice requirement for a slander of title action such that Appellant was required to prove a constitutional actual malice standard through a preponderance of the evidence. There is no evidence in the record to reasonably support the Master's conclusion that Respondent executed the quitclaim deed to the wrong party with legal justification, regardless of whether Respondent was focused on collecting taxes and correcting its errors or acting with bad intent.

CONCLUSION

For the foregoing reasons and those previously set forth in Appellant's Initial Brief, Appellant respectfully requests that the Court reverse the Master-In-Equity's December 27, 2019 Order and remand for further findings consistent with the Court's decision.

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

February 5, 2021
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CERTIFICATE OF SERVICE

This is to certify that I, ***Megan C. Davis***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Appellants, have this date emailed a true and correct copy of the within ***Appellant's Initial Reply Brief*** to:

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Re: Sara Gleaton as PR for Estate of Wilton Gleaton v. Orangeburg County
Appellate Case No.: 2020-001006

Dear Ms. Kitchings:

Please find enclosed for filing, Appellant's Initial Reply Brief in the above-referenced case.

By copy of this letter, Appellant's Initial Reply Brief is being served on all counsel of record.

With kind regards, I am

Sincerely,

John E. Parker, Jr.

JEP2/mcd
Enclosures as stated

cc: Jerrod A. Anderson, Esquire
Andrew F. Lindemann, Esquire