

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2020-001522

Town of Hilton Head Island, South Carolina, John J. McCann and
Stephen G. RileyIntervenors/Plaintiffs

v.

Beaufort County, South Carolina.....Respondent

v.

James BeckertAppellant

**RESPONDENT BEAUFORT COUNTY'S
REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL**

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INTRODUCTION

Respondent Beaufort County ("County") has filed the instant Motion to Dismiss Appeal and Incorporated Memorandum in Support ("Motion to Dismiss") asking this Court to dismiss Appellant James Beckert's ("County Auditor") appeal from a November 20, 2020 Order Granting Temporary Injunction as to the Rural and Critical Lands Debt Service Millage Rate ("Temporary Injunction"). The Temporary Injunction required that Appellant County Auditor do the following by November 25, 2020:

- (a) fulfill his ministerial duty and levy taxes on properties at 4.8 mils for Rural & Critical (Purchase of Real Property Program) debt service for the 2020-2021 tax year . . .
- (b) prepare an amended tax roll duplicate reflecting the same; [and]
- (c) deliver the amended tax roll duplicate to the Beaufort County Treasurer.

The Temporary Injunction has become moot, since the County Auditor did what was required of him, and tax bills have been sent to taxpayers. The deadline in the Temporary Injunction has long passed. As a result, the County has asked the Court to dismiss this appeal. The County Auditor filed his Return to the Motion to Dismiss. For the following reasons, the County Auditor's arguments in his Return do not state a basis for the Court to deny the Motion to Dismiss.

MOTION/ARGUMENTS

As argued in the County's Motion to Dismiss, "[t]he rule that an appellate court limits its review to the issues necessary to a proper disposition of the appeal, and will not consider immaterial or moot questions, applies when reviewing decrees and orders relating to injunctions." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 597 (2001) (citation omitted). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973); accord *Floyd v. Horry Cty. Sch. Dist.*, 351 S.C. 233, 234, 569 S.E.2d 343, 344 (2002) ("Where a temporary injunction has expired, as here, the issue is moot."). "The function of appellate courts is not to give opinions on merely abstract or

theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation." *See Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003).

The County Auditor does not dispute that Judge Mullen's Temporary Injunction is moot in light of intervening facts:

Respondent correctly notes that the tax bills were amended by Appellant in compliance with the temporary injunction at issue in this appeal. Respondent also correctly notes that there is no practical relief which can be granted concerning these amended tax bills.

(*See Ret. to Mot. to Dismiss*, at 2). Rather, Mr. Beckert argues that "the issues on appeal fall within the exceptions to the mootness doctrine." (*See id.*).

"Two exceptions in which the court may address an issue despite mootness are 1) when the issue raised is capable of repetition, yet evading review, and 2) when the question considers matters of important public interest." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26–27, 630 S.E.2d 474, 478 (2006). "Third, 'if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.'" *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (citation omitted). "The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked." *Id.*

For the reasons that follow, none of the exceptions to mootness apply in this case.

A. This Is Not an Issue Capable of Repetition Yet Evading Review

The County Auditor first argues that the Court should not dismiss his appeal because it raises issues that are capable of repetition, but would evade review if the Court dismissed his appeal:

Essentially, the toothpaste is out of the tube. Like death, taxes may be a certainty but, unlike death, the certainty of taxation occurs annually. Appeals on the other hand do not resolve in such a succinct and predicable manner.

(See County Auditor's Ret. to Mot. to Dismiss, at 4). For the reasons that follow, the facts of this case do not warrant application of this exception to mootness.

In order for this exception to apply, "the action must be one which will *truly* evade review." See *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006) (emphasis added); accord *Seabrook v. City of Folly Beach*, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999) ("[W]hile the factual scenario presented by this appeal is certainly capable of repetition, it does not evade review, and would have been clearly reviewable had Folly Beach not voluntarily removed the conditions and Respondents abandoned their taking claim."). For example, "short-term student expulsions, like short-term student suspensions, are 'completed long before an appellate court can review the issues they implicate.'" *A.S. v. Sch. Dist. of Greenville Cty.*, No. 2005-UP-360, 2005 WL 7084020, at *2 (S.C. Ct. App. May 23, 2005) (quoting *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431-32, 468 S.E.2d 861, 864 (1996) (addressing mootness with regard to a student's ten-day suspension)).

While the Temporary Injunction is not subject to review, the issues in this appeal will not evade review in this Court. All that is moot and ineligible for review is the specific question of whether a Temporary Injunction was proper. The Temporary Injunction did not end proceedings before the trial court on the substance of the County's claims and the County Auditor's defenses. To the contrary, there remain pending claims for final relief in the form of mandamus and declaratory judgment. Those claims are still pending and have begun proceeding forward. In fact, the parties have begun conducting written discovery and depositions as to the final relief that the County requests. At the correct time and in the appropriate context, the trial court will *finally* rule on the merits of County's requests for permanent relief and the County Auditor's defenses to those claims. The relevant substantive issues — *e.g.*, whether South Carolina law permits the County Auditor to disregard a proper ordinance enacted by the County's governing body — will be subject to full appellate review at that time. Contrary to his current arguments, the County Auditor will not be deprived of an appeal. To the contrary, he will be able to appeal from a final order that is based on a full and complete factual record.

Permitting an appeal from the now-moot granting of interim injunctive relief will not benefit Beckert, the County or the judicial process. Instead of allowing Beckert to file a premature appeal from a mere interim remedy, the Court should require that the parties file an appeal from an appropriate final judgment entered after discovery and other procedural protections are utilized. Review of a final order entered after full discovery will allow for a more robust review.

The County Auditor seeks to essentially use this Court as an *ad hoc* trial court, to rule on the merits of the entire case before the trial court has the opportunity to do so. All that the trial Court did was enter a Temporary Injunction to maintain the *status quo*; it did not make a final determination on the merits of any claim. Before this Court can rule on any issues, the trial court must be given an opportunity to consider the case and render a final decision:

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is “axiomatic that an issue cannot be raised for the first time on appeal.” *Id.* Imposing such a requirement on the appellant “is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

See Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). The interest of justice would be best served by having this Court review the trial court's final determination on the merits, rather than its now-moot granting of preliminary relief.

For the foregoing reasons, this Court should grant the County's Motion to Dismiss in this matter.

B. This Case Is Not Immediately Appealable Because of Public Interest

The County Auditor next asks the Court to deny the County's Motion to Dismiss and consider this appeal from a moot order because of the importance of the issues presented:

Succinctly, the issues raised in this appeal involve subject matter jurisdiction and justiciability concerns about the judicial branch determining valuation disputes between a legislative body and an executive branch official. The appeal also involves questions about the propriety of a budget ordinance acting as a cap on the debt millage rate levied by an auditor. Finally, the appeal questions the propriety of a legislated millage rate which does not raise sufficient funds to pay debt without resorting to a sinking fund to cover the shortfall.

These issues are not private party disputes but instead involve matters of such public importance that Respondent's motion cites concerns of "critical cash shortages for [Respondent] and other taxing entities."

(*See County Auditor's Ret. to Mot. to Dismiss*, at 5). However, this argument does not provide a compelling reason for the Court to deny the County's Motion to Dismiss.

Under this exception to mootness, a court may decide an action where the issues present are not simply important, but also "of imperative and manifest urgency":

This Court has recognized a "public importance" exception to mootness holding that "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001) (internal citations omitted). The determination whether a particular suit raises "questions of imperative and manifest urgency" must be decided on an individual basis.

See Sloan v. Greenville Cty., 361 S.C. 568, 570-71, 606 S.E.2d 464, 465-66 (2004). Generally, the "public importance" exception is applied in a "limited nature." *See id.*

The County Auditor can make no showing to support this exception. While the issues in this case are undoubtedly of great public importance in general, there is nothing to suggest that the question is of such immediacy and urgency that the Court must immediately hear this appeal. To the contrary, this issue will not arise again for several months. In the interim, the parties are able to litigate their dispute toward a final resolution. There is not urgent, compelling reason that this Court must hear this moot, interlocutory appeal from the granting of interim relief. To the contrary, the public interest is best served by the continued litigation of this matter in the trial court toward a final decision on the merits.

Therefore, because there is no evidence that the issues raised in this appeal are of imperative or manifest urgency, the Court should grant the County's Motion to Dismiss this appeal.

C. This Case Is Not Immediately Appealable Because It May Affect Future Events or Have Collateral Consequences for the Parties

The County Auditor next argues that the third exception to mootness applies to the Temporary Injunction because "because a decision in this appeal will affect future events and have collateral consequences." (*See* Ret. to Mot. to Dismiss, at 6).

Respectfully, the interim Temporary Injunction will have no impact on any future events and will not have any collateral consequences. As discussed above, this case is still pending in the trial court. It is expected and hoped that the parties will obtain a final order on the merits before another injunction is required. The final order on the merits will control and govern future events, not the Temporary Injunction. To the contrary, the Temporary Injunction has no binding impact on the pending lawsuit.

The appropriate time for the County Auditor to appeal will be from a final judgment disposing of this matter upon an appropriate record. Judge Mullen's Temporary Injunction was merely a form of interim relief sought to prevent Beaufort County from being irreparably harmed during the pendency of this case. It does not dispose of all of the issues raised in Beaufort County's Complaint. For example, Respondent Beaufort County's First Amended Complaint in Mandamus requests declaratory relief concerning debt service tax millage:

57. Plaintiff is also entitled to a declaratory judgment that Defendant must levy taxes on properties at 4.8 mills for Rural & Critical debt service as reflected in the County's Budget Ordinance and must deliver an amended tax roll to the Treasurer as required by state statute in the next 21 days.

58. Plaintiff is further entitled to a declaratory judgment to the effect that Defendant does not have discretion to unilaterally levy millages for debt service at any level he chooses; rather, he is obligated to only levy sufficient millage to provide for debt service.

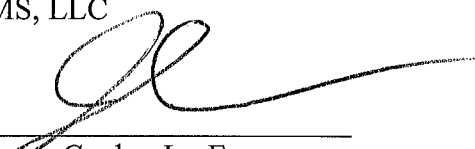
(See Ex. A ¶¶ 57-58). The parties did not have a full opportunity to conduct discovery and develop a complete factual record for Judge Mullen to decide all of Beaufort County's claims; those claims remain pending in the trial court. In fact, the parties are now engaging in active discovery in the trial court (including taking depositions) to establish a proper record for the trial court to rule on the merits of Beaufort County's claims against the County Auditor. If the Court determines this appeal, it will risk interfering with the remaining claims and prematurely deciding this case on an incomplete record.

CONCLUSION

For the reasons set forth above and in its original Motion to Dismiss Appeal, this Court should grant dismiss the instant appeal as moot.

March 18, 2021

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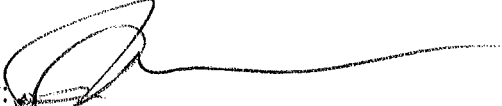
I certify that I have served Respondent Beaufort County's Reply in Support of Motion to Dismiss Appeal on the above-referenced Appellant and on other parties by email and by depositing a copy of it in the United States Mail, postage prepaid, on March 18, 2021, addressed to counsel at the following addresses:

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