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**May 24 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000343

South Carolina Public Interest Foundation and John Crangle, individually  
and on behalf of all others similarly situated,..... Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina,  
Willoughby & Hoefler, P.A., and Davidson, Wren & DeMasters, P.A.,..... Respondents.

**REPLY IN SUPPORT OF MOTION TO DISMISS**

Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefler, P.A., and Davidson, Wren & DeMasters, P.A. (collectively, Respondents), submit this Reply in support of their motion to dismiss the above-captioned case. As set forth in Respondents' memorandum in support of their motion to dismiss, this case should be dismissed because Appellants South Carolina Public Interest Foundation and John Crangle (collectively, Appellants) have failed to appeal from the primary underlying order of the circuit court, which was dispositive on the issue of Appellants' lack of standing to bring this case.

Specifically, the Honorable Alison Renee Lee found below that Appellants did not have standing to pursue any of their claims against Respondents. *See* Mem. in Supp. of Mot. to Dismiss, Ex. A, Order Denying Plaintiffs' Motion for Preliminary Injunction Order (October 14 Order) (“[T]his Court finds Plaintiffs lack standing...”) & Ex. B, Order Denying Plaintiffs' Motion to

Alter or Amend (December 17 Order) (“This Court properly ruled Plaintiffs lack standing in this matter.”). Respondents’ motions to dismiss filed with the circuit court then came before the Honorable R. Kirk Griffin who issued an order dismissing the case on the ground that Judge Lee’s ruling that Appellants lacked standing was dispositive.<sup>1</sup> See Notice of Appeal, Ex. 1, Order Granting Motions to Dismiss (March 5 Order) (“Judge Lee’s findings are dispositive.”); Mem. in Supp. of Mot. to Dismiss, Ex. C, Judge Griffin’s Feb. 12, 2021 Correspondence to the Parties (“The Court finds that Circuit Court Judge Alison Renee Lee’s order dated October 14, 2020 is dispositive as to the issue of standing.”).

Pertinent here, Appellants did not identify in or attach to their Notice of Appeal either of Judge Lee’s orders but only identified and attached Judge Griffin’s March 5 Order. Because Appellants have not appealed the October 14 Order or the December 17 Order, Judge Lee’s ruling that Appellants lack standing is now the law of the case. See *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding that an unappealed ruling is law of the case). And, because it is now the law of the case that Appellants do not have standing in this matter, there is no justiciable controversy, and this appeal must be dismissed. See *Lennon v. S.C. Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998) (“No justiciable controversy is presented unless the plaintiff has standing to maintain the action.” (quoting *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994))).

In their response in opposition to Respondents’ motion to dismiss, Appellants fail to refute this inescapable conclusion, and appear to either ignore or not comprehend the actual reason their appeal must now be dismissed and the underlying relevant legal principles requiring dismissal. Instead, Appellants spend the vast majority of their Response simply repeating arguments on the

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<sup>1</sup> Judge Griffin also concurred with Judge Lee’s analysis and findings.

merits of their claims made before—and rejected by—the circuit court and republishing false (if not defamatory) allegations against Respondents.<sup>2</sup> In their scant argument against dismissal, Appellants’ only claimed bases for why dismissal is not appropriate are (1) they were not required to appeal Judge Lee’s orders within 30 days of Judge Lee’s December 17 Order denying reconsideration; and (2) Judge Lee’s rulings were not binding because her orders were issued in the context of resolving a preliminary injunction. Both of these arguments miss the point and, in any event, have no merit.

First, Judge Lee’s findings in her October 14 Order and December 17 Order are not the law of the case simply because Appellants failed to appeal from those orders within 30 days of her December 17 Order. Rather, Judge Lee’s findings that Appellants lack standing are now law of the case because Appellants have not appealed from those orders *at all*—either within 30 days of Judge Lee’s December 17 Order or within 30 days of Judge Griffin’s March 5 Order—and the time to appeal has expired. In fact, Appellants do not—because they cannot—dispute that they have not appealed Judge Lee’s orders. But it is axiomatic—and required by the Rules—that to challenge an order and the findings set forth in that order on appeal, an appellant must actually appeal from that order. *See* Rule 203(d)((1)(B), SCACR (providing, in part, that the notice of appeal “*shall* be accompanied by... [a] copy of the order(s) and judgment(s) *to be challenged* on appeal” (Emphasis added)). By not identifying in their Notice of Appeal or attaching to their Notice of Appeal either of Judge Lee’s orders, Appellants have not appealed from and now can no longer

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<sup>2</sup> Respondents will not address the litany of misstatements of fact and law set forth in Appellants’ Response as they have no bearing on the issue now before this Court and will be explained in the appropriate time and place. Suffice to say, however, the majority of Appellants’ factual allegations are false—and were in fact debunked in the proceedings below—and their legal conclusions are wrong.

challenge the finding that Appellants lack standing in this case. Therefore, the law of the case is that Appellants lack standing. *ML-Lee Acquisition*, 327 S.C. at 241, 489 S.E.2d at 472.

It is not enough that Appellants appealed Judge Griffin's order, because an appeal of his order is not also an appeal of Judge Lee's orders. As set forth in Respondents' memorandum in support of their motion to dismiss, the decisions of the Supreme Court in *Bakala v. Bakala*<sup>3</sup> and this Court in *McAleese v. McAleese*<sup>4</sup> confirm this point and are controlling here. In each of those cases, like here, the appellant failed to appeal from prior orders that were dispositive of certain issues in the case and instead only appealed from a subsequent order. Because of the failure to appeal from the prior orders, the Supreme Court in *Bakala* and this Court in *McAleese* found that the unappealed rulings in those prior orders were the law of the case. For the exact same reason, Judge Lee's unappealed ruling that Appellants lack standing is the law of the case.

Notably, Appellants do not challenge—because they cannot—the legal principles set forth in *Bakala* and *McAleese* that one circuit court judge cannot overrule the prior order of another judge and that the failure to appeal a prior order in the case renders the findings in such unappealed prior order the law of the case. Instead, Appellants merely contend that those decisions do not support dismissal here because the decisions in those cases were affirmances rather than dismissals. However, the obvious reason the appeals in those cases were not dismissed (and instead resulted in affirmances) was that the unappealed findings that became the law of the case in each of those matters did not relate to the appellant's lack of standing or the justiciability of the appeal.<sup>5</sup> Here, though, the unappealed findings of Judge Lee that are now law of the case relate directly to Appellants' ability to pursue this matter as an active case or controversy. Therefore, and although

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<sup>3</sup> 352 S.C. 612, 576 S.E.2d 156 (2003).

<sup>4</sup> 309 S.C. 548, 424 S.E. 2d 558 (Ct. App. 1992).

<sup>5</sup> There also is no indication that respondents in those cases filed any motions to dismiss.

the fact that Appellants failed to appeal Judge Lee’s orders certainly would be a basis to affirm Judge Griffin’s order as well—which Appellants appear to concede—dismissal is the proper and required result here. *Jowers v. S.C. Dep’t of Health & Env’tl. Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) (“Our courts will not address the merits of any case unless it presents a justiciable controversy.”). In short, the *Bakala* and *McAleese* decisions are controlling and require dismissal of this case.

The second and only other basis upon which Appellants oppose dismissal is their contention that Judge Lee’s rulings were somehow “not binding” because her orders were issued in the context of resolving a preliminary injunction. The obvious and fatal deficiency of this contention is that Judge Lee specifically stated that her ruling on the legal issue of Appellants’ standing was separate and apart from her determination that Appellants did not meet the legal standards for issuance of a preliminary injunction. *See* December 17 Order (holding that “[Appellants]’ standing and request for preliminary injunction *are separate issues*,” and that “[t]he question of standing had to be determined” and “[Appellants]’ lack of standing ... could have ended [the inquiry]” (Emphasis added)). The federal cases cited by Appellants in support of their contention are therefore inapposite as they address the different and distinct issue of whether a court’s findings and conclusions made solely in the context of determining whether a plaintiff has a “likelihood of success on the merits” under the preliminary injunction standard are binding at a subsequent trial on the merits. But here, Judge Lee did not merely determine that it was *unlikely* that Appellants could demonstrate standing, nor did she limit her finding that Appellants lacked standing to the request for preliminary injunction. Rather, Judge Lee ruled—separate from her determination that Appellants failed to meet their burden for entitlement to a preliminary injunction—that Appellants lacked standing to pursue any of their claims against Respondents.

See October 14 Order at 14 (“[T]his Court finds Plaintiffs lack standing *and* have failed to meet their burden for a Preliminary Injunction in this matter.” (Emphasis added)); December 17 Order at 2 (“This Court properly ruled Plaintiffs lack standing *in this matter.*” (Emphasis added)).

Simply put, as Judge Griffin properly and necessarily recognized, Judge Lee’s orders were dispositive as to the issue of standing. Accordingly, to challenge the finding that they lacked standing in this matter, Appellants were required to appeal from Judge Lee’s orders, which, as Appellants admit, they did not do. This failure to appeal from the dispositive orders of Judge Lee renders her findings the law of the case and this appeal non-justiciable. Therefore, this appeal should be dismissed.

Respectfully submitted,

s/ J. Emory Smith, Jr.  
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s/ J. Todd Rutherford  
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**Attorneys for Respondent Davidson, Wren &  
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May 24, 2021  
Columbia, South Carolina

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
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South Carolina Public Interest Foundation and John Crangle, individually  
and on behalf of all others similarly situated, ..... Appellants,

v.

Alan Wilson, Attorney General for the State of South Carolina,  
Willoughby & Hoefler, P.A., and Davidson, Wren & DeMasters, P.A., ..... Respondents.

**PROOF OF SERVICE**

This is to certify that the undersigned counsel, an attorney with The Rutherford Law Firm, LLC, has caused to be served this day one (1) copy of Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefler, P.A., and Davidson, Wren & DeMasters, P.A.'s Reply in Support of Motion to Dismiss via electronic mail at the email addresses as stated in the Attorney Information System and as set forth below:

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A copy of the email serving counsel as stated above is attached hereto.

s/J. Todd Rutherford  
J. Todd Rutherford, S.C. Bar No. 12097

May 24, 2021  
Columbia, South Carolina

## Todd Rutherford

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**From:** Todd Rutherford  
**Sent:** Monday, May 24, 2021 5:01 PM  
**To:** jgriffin@griffindavislaw.com; jgriffin@griffinhumphries.com;  
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**Subject:** SC Public Interest Foundation et al v Wilson et al; Appellate Case No. 2021-000343  
**Attachments:** 2021-05-24 Filing Ltr re Reply ISO Mot to Dismiss.pdf; 2021-05-24 Respondents' Reply  
ISO Motion to Dismiss (Final).pdf

Counsel:

As permitted by part (g)(3) of Supreme Court Order 2020-05-29-02, I am herewith serving via email Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A.'s Reply in Support of Motion to Dismiss in the above-captioned case. Shortly, I will be filing this document with the Court of Appeals electronically as permitted by part c(6) of the Order, and will attach this email to the proof of service of same.

THE RUTHERFORD LAW FIRM, LLC  
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May 24, 2021

**VIA ELECTRONIC FILING**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**RECEIVED**  
**May 24 2021**  
**SC Court of Appeals**

Re: *South Carolina Public Interest Foundation and John Crangle, Individually and on behalf of all others similarly situated, v. Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefler, P.A., and Davidson, Wren & DeMasters, P.A., Appellate Case No. 2021-000343*

Dear Ms. Kitchings:

Attached for electronic filing in accordance with Supreme Court Order 2020-05-29-02, part (c)(6), and pursuant to Rule 240 of the South Carolina Appellate Court Rules, please find Respondents Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefler, P.A., and Davidson, Wren, & DeMasters, P.A.'s Reply in Support of Motion to Dismiss. As permitted by Order 2020-05-29-02, part (d), no other copies, whether paper or electronic, are being provided.

By copy of this letter, we are serving all counsel of record via email as permitted by Order 2020-05-29-02, part (g)(3), and attached is a proof of service to that effect.

Thank you. If you have any questions, please call.

Sincerely,

**THE RUTHERFORD LAW FIRM, LLC**

s/J. Todd Rutherford

J. Todd Rutherford

Attachments

cc: James M. Griffin, Esquire  
Badge Humphries, Esquire  
Margaret N. Fox, Esquire  
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The Honorable Jenny Abbott Kitchings  
May 24, 2021  
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*(all via email)*