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**Dec 01 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

The Honorable Jocelyn Newman  
Circuit Court Judge

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Civil Action No.: 2020-CP-40-01996  
Appellate Case No.: 2021-001012

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State of South Carolina, ex rel Alan Wilson, Attorney General.....Respondent

v.

City of Columbia..... Appellant

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**INITIAL BRIEF OF APPELLANT**

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**STATEMENT OF THE ISSUES ON APPEAL**

- I. Whether the State Court erred by ruling on the pleadings rather than providing Appellant City of Columbia an opportunity to argue the merits of its case?
- II. Whether the State Court erred by concluding that state law exclusively preempts the entire of field of firearm regulation so as to prohibit any firearms regulations by a local municipality?
- III. Whether the State Court erred in concluding the City of Columbia’s Ordinances 2019-046, 2019-056, and 2019-063 violate the Second Amendment of the United States Constitution?

**STATEMENT OF THE CASE**

The State brought the underlying suit by a Complaint filed April 16, 2020, challenging three firearms ordinances of the City of Columbia as violating state law and the Second Amendment of the United States Constitution. The City filed an Answer on May 18, 2020 denying that the State was entitled to relief. Subsequently, the State filed a Motion for Judgment on the Pleadings, which the State Court granted on May 4, 2021.

## STANDARD OF REVIEW

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006); State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019), reh'g denied (Sept. 19, 2019). However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard. Kennedy, 398 S.C. at 610, 730 S.E.2d at 864 (citing Crossmann, 395 S.C. at 47, 717 S.E.2d at 592).

A judgment on the pleadings is a drastic procedure and, therefore, is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle her to judgment. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). Moreover, the pleadings must be construed liberally to ensure substantial justice between the parties. *Id.* McCurry v. Keith, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994).

## ARGUMENT

I. The trial court erred by ruling on the pleadings rather than providing Appellant City of Columbia an opportunity to argue the merits of its case.

A judgment on the pleadings is a drastic procedure and, therefore, is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle her to judgment. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). However, a motion for judgment on the pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue. Rosenthal v. Unarco

Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) (citing Wooten v. Standard Life and Cas. Ins. Co., 239 S.C. 243, 122 S.E.2d 637 (1961)). Moreover, the pleadings must be construed liberally to ensure substantial justice between the parties. *Id.* McCurry v. Keith, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994).

In this case, Appellant argues there are several issues of law and fact presented by the conflict between the State and the City's interpretation of the relevant ordinances and state statutes that warrant Appellant having the opportunity to argue the merits of their ordinances. Instead, Judge Newman ruled on the pleadings and automatically invalidated the ordinances through the court's decision.

Appellant opines that clear issues of fact and law exist and are presented by the arguments in this case that warrant a hearing on the substance and merits. For instance, regarding City of Columbia Ordinance 2019-063, the court failed to address the fact that 18 U.S.C Section 922(q)(3), the Gun-Free School Zones Act of 1990, with amendments, allows local governments to establish gun-free school zones or the fact that the ordinance does not conflict with existing state laws as Respondent suggests. Appellant argues that the State Court depriving Appellant the opportunity to argue the merits of its ordinances is an abuse of discretion.

Additionally, as to Ordinance 2019-046, regarding Ghost Guns, state law gives the Appellant municipality the ability to declare a location that is used to violate state or federal law, a violation of land use regulation, and to deem that location a nuisance. Accordingly, the referenced ordinance is not preempted by state law, and Appellant should be allowed the opportunity to argue its position before this court. Appellant

argues that the State Court depriving Appellant the opportunity to argue the merits of its ordinances is an abuse of discretion.

II. The trial court erred by concluding that state law exclusively preempts the entire of field of firearm regulation so as to prohibit any firearms regulations by a local municipality.

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006). State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019), reh'g denied (Sept. 19, 2019) An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence. *Id.* Berberich v. Jack, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011). However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard. Kennedy, 398 S.C. at 610, 730 S.E.2d at 864 (citing Crossmann, 395 S.C. at 47, 717 S.E.2d at 592).

Respondent claimed in Paragraph 1 of its Memorandum in Support of its Motion for Judgment on the Pleadings, and the lower court agreed, that through S.C. Code Ann. §§23-31-510 and 23-31-520, that “State law expressly occupies the entire field of South Carolina firearm regulation and preempts any local government on the same subject.”

Specifically, Respondent’s position is that the General Assembly intended that State law expressly occupy the entire field of South Carolina firearm regulation and preempt any local ordinance on the same subject, except where local regulations are expressly permitted by those same statutes, and the lower court adopted that analysis and

opinion. See, e.g., Op. S.C. Att’y Gen., 2017 WL 6940255 (December 29, 2017); see also S.C. Code Ann. §§ 23 31-510 (Supp. 2019) & -520 (2007). Op. S.C. Atty. Gen., 2019 WL 6794778, at \*7 (Dec. 2, 2019).

However, Appellant disagrees with this interpretation and application of the statutes and believes the lower court’s ruling was in error lacking evidentiary support. The State Legislature had within its purview the ability to expressly preempt the entire field of firearm regulation if that was their legislative intent. However, the General Assembly chose to draft the statute with an enumerated list of the seven specific areas preempted. Appellant’s answer clearly shows that there is a material issue that exists and that the matter should be allowed to go forward to be argued on its merits. The City’s ordinances do not conflict with any of these seven areas and actually complements existing state law.

III. The trial court erred in concluding the City of Columbia’s Ordinances 2019-046, 2019-056, 2019-063 violated the Second Amendment of the United States Constitution.

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006). State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019), reh’g denied (Sept. 19, 2019). An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence. *Id.* Berberich v. Jack, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011). However, an appellate court may make its own determination on questions of law and need not defer to the trial

court's rulings in this regard. Kennedy, 398 S.C. at 610, 730 S.E.2d at 864 (citing Crossmann, 395 S.C. at 47, 717 S.E.2d at 592).

In Paragraph 2 of its Memorandum in Support of its Motion for Judgment on the Pleadings respondent asserts Appellant City of Columbia's ordinances violate the above referenced statutes as well as the Second Amendment of the United States Constitution.

Appellate opines the ordinances in question violate neither the Second Amendment or any existing state law. Respondent attempts to rely upon its office's opinions to support its positions, however, it is well settled that opinions of the State Attorney General's Office do not carry the weight of the law, though they may carry persuasive authority. Notwithstanding that position, the Attorney General's Office has opined many times in agreement with the South Carolina Supreme Court and the South Carolina Constitution that:

When determining the validity of a local ordinance, we begin with the principle that '[a]n ordinance is a legislative enactment and is presumed to be constitutional.'... The burden of proving the invalidity of a local ordinance rests with the party attacking the ordinance.

*Op. S.C. Att'y Gen.*, 2017 WL 4707545 (October 11, 2017); Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985); S.C. Const., Art. VIII, §17.

As the Supreme Court has stated, "Where no conflict exists, both laws stand." Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 553, 397 S.E.2d at 664 (quoting McAbee v. Southern Rwy. Co., 166 S.C. 166, 169 170 164 S.E. 444-445 (1932)).

For instance, specifically regarding Ordinance 2019-056, Extreme Risk Protection Orders, Respondent asserts that the ordinance grants the Appellant the authority to

confiscate firearms, but it does no such thing. As S.C. Code §23-31-520 states, local law enforcement has the authority to confiscate weapons if incident to an arrest. Appellant's ordinance does not expand this authority, but rather gives any court of competent jurisdiction, after weighing the facts, the ability to order that someone, who the court has deemed an extreme risk to him or herself or to others, to temporarily relinquish firearms to either a licensed gun shop or, if the individual chooses to do so, to a law enforcement agency, until the court rescinds the order, deems the individual to no longer be a threat, or the limited time for relinquishment expires.

As to Respondent's claim that the ordinances in question are unconstitutional as a violation of the Second Amendment of the United States Constitution; Appellant wholly disagrees. Appellant's ordinances do not represent any abuse of the Second Amendment. Under Respondent's logic, any federal statutes or state law that regulate firearms would also be in violation of the Second Amendment because any regulation of firearms by any governmental entity would be considered a violative of the Constitution, and of course, this is not the case.

### **CONCLUSION**

Appellant opines that the State Court erred by ruling on the pleadings rather than providing Appellant City of Columbia an opportunity to argue the merits of its case; that the State Court erred by concluding that state law exclusively preempts the entire of field of firearm regulation so as to prohibit any firearms regulations by a local municipality; and that the State Court erred in concluding the City of Columbia's Ordinances 2019-046, 2019-056, and 2019-063 violate the Second Amendment of the United States

Constitution. Therefore, Appellant respectfully requests that this Court grant its appeal and allow Appellant the opportunity to be heard on the merits regarding the ordinances in dispute.

s/R. Allyce Bailey  
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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM THE RICHLAND COUNTY  
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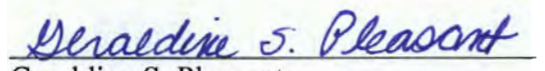
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**PROOF OF SERVICE**

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The undersigned hereby certifies that she served a copy of the *Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal* upon counsel for Respondent via email indicated below on this 1<sup>st</sup> day of December, 2021:

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December 1, 2021  
Columbia, South Carolina



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**SC Court of Appeals**

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December 1, 2021

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

RE: State of South Carolina Ex Rel Alan Wilson Attorney General v. City of  
Columbia  
Circuit Court File No.: 2020-CP-40-01996  
Appellate Case No.: 2021-001012

Dear Ms. Kitchings:

Enclosed for filing the *Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal* along with the Proofs of Service in the above referenced case.

By copy of this letter, I am serving same on the attorneys for the Appellant.

Sincerely,

R. Allyce Bailey  
Assistant City Attorney

RAB/gsp  
Enclosures as Stated

cc: Alan Wilson, Esquire  
David S. Jones, Esquire  
Robert D. Cook, Esquire  
J. Emory Smith, Jr., Esquire