

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-06482

Appellate Docket No. 2013-329

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SC Court of Appeals

Harrison Partners, LLC, Appellant,

v.

Renewable Water Resources, Respondent.

APPELLANT'S RETURN

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RETURN OF THE APPELLANT

Respondent's motion misconstrues the applicability of the cases which it cites.

First, the Respondent argues that the Appellant never contested the five alternative grounds in the "subject order". The Order under appeal in the present case is an order from the Circuit Court *sitting as an appellate court*. Sitting as the appellate court, the Circuit Court issued a ruling affirming the lower tribunal. The Circuit Court's opinion listed five additional sustaining grounds as a basis for its ruling. Contrary the Appellant's contention, the Respondent was not required to raise those issues in its Rule 59(e) motion:

Third, our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam v. S.C. Dep't of Transp., 361 S.C. 1, 698 S.E.2nd 612. (*emphasis in original*).

Rule 59, SCRCPC, is a vehicle to obtain a ruling from the court on issues that were raised but not ruled upon. Here, the issues was raised and the Circuit Court made a ruling which included the alternative sustaining grounds. As a result, no further action was required to preserve that Appellant's right to appeal from the Circuit Court. As a party aggrieved by the Circuit Court's order, Appellant was entitled under Rule 201(b) SCACR to an appeal to this Court.

Second, the Respondent argues that the Appellant can not raise "new grounds" on appeal. This argument misconstrues the holdings of each of the cases cited by the Respondent in his motion:

The court's ruling in Hill involved an issue that was not ruled on by the trial court but argued on appeal. In Elam, although the court referenced issue preservation in its reasoning, the court's holding deals with the issue of timeliness of an appeal where multiple Rule 59(e) motions were filed. In Biales the appellant did not argue several issues in the Court of Appeals. This Court held that it would not rule on issues that it was not presented. Similarly, in Duck this Court ruled that it would not rule on an issue that had not been presented on appeal. Ion, also cited by the Respondent, stands for the proposition that on appeal, the Respondent may argue additional sustaining grounds. Although all of the cases cited by the Respondent deal with, or at least mention issue preservation in some way, none are applicable in the present case.

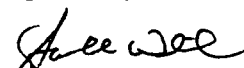
Likewise, Portman, and all of the other cases argued by the Respondents under the theory of "ripened to finality," each deal with findings of the trial court that were not argued to the Court of Appeals and therefore considered the law of the case. Here, the Appellant was not required to file a post trial motion in the Circuit Court regarding alternative sustaining grounds, or any other ruling that was expressly included in the Circuit Court's order. Therefore, rulings of the Circuit Court can not possibly "ripen" into the law of the case at this stage of the present appeal.

The question of issue preservation is not an issue for the summary dismissal of an appeal. The failure to preserve an issue for appeal does not deprive an appellate court of jurisdiction to hear the appeal. Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 17, 698 S.E.2d 612, 621 (2010). As to issue preservation, there simply was nothing more required of the Appellant to protect his right to appeal from the issues addressed in the Circuit Court's decision. Whether or not the Circuit Court erred in its ruling, what arguments are persuasive, or which party will ultimately prevail, is a matter for this Court to determine based on the party's briefs and the record on appeal. Here the Respondent

seeks to short cut the process and have the Appellant denied the right to appeal issues that were clearly ruled on by the Circuit Court without the benefit of the Appellant being able to fully brief his case or provide the court with a record on appeal.

WHEREFORE, the Appellant submits that the motion of the Respondent should be denied and the Appellant allowed to proceed with briefing of the case.

Respectfully submitted,



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April 23, 2012.

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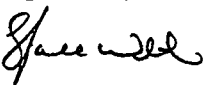
Renewable Water Resources, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Return of the Appellant on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below, this 24th day of April, 2013:

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Respectfully submitted,


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April 24, 2013.