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**Apr 11 2022**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2022-000389  
Case No. 2020-CP-40-03475

University Hill Neighborhood Association.....Plaintiff/Respondent,

v.

City of Columbia, City of Columbia Design and Development Review Committee and  
Trinitas Ventures LLC. ....Defendants/Appellants.

**RETURN IN OPPOSITION TO MOTION  
FOR EXPEDITED APPELLATE REVIEW**

Because they are dissatisfied with a ruling that frustrates their ability to build apartments, Appellants City of Columbia (City), City of Columbia Design/Development Review Committee (DDRC), and Trinitas Ventures, LLC (Trinitas) demand a privileged position on the docket and ask the Court to put itself on a deadline by setting “dates for judicial determination.” Mot. Exped., 12. Half of the litigants that appear before the Court are also dissatisfied with the outcome in their cases below but still wait for a decision in the ordinary course. But here, Appellants complain that if their request for expedited review is denied, “the judicial process will continue to unnecessarily and unreasonably delay a resolution[.]” *Id.* Notably, Appellants *themselves* are responsible for much of the delay they complain about since it was their decision in December 2020 to take an interlocutory appeal. That premature demand for appellate review was dismissed in January 2021

*because* Respondent University Hill Neighborhood Association (University Hill) moved to dismiss the appeal as premature. See App.’s Mot. Expedite, 3 n.2 & 6. Then, when Appellants could not get their case scheduled to their liking, they petitioned for a writ of mandamus to the circuit court, complaining a lawyer-legislature sought protection for legislative duties. Id. at 3.

Now, having lost again below, Appellants are back seeking special treatment at the same time they are also asking the Supreme Court to certify this matter under Rule 204(B), SCACR. All Appellants can muster here is the unremarkable assertion that statutory construction would be helpful and that just *one* of the three Appellants (not either of the two public bodies) would suffer some abstract financial harm if they are not permitted to build apartments. Appellants propose forgoing any briefing and ask the Court to decide the case based on briefs from their failed interlocutory appeal. See Mot. Expedite, 12. They also want the Court to set “dates for judicial determination.” Id. It is an extraordinary set of demands for special treatment predicated on the thinnest of arguments in support. The motion should be denied.

#### **STANDARD OF REVIEW**

Appellants do not state a standard for reviewing their request because there is no precedent for using Rule 263(b), SCACR, concerning the computation of time for routine case-filings, and converting it into a vehicle to expediting consideration of some cases over others.

#### **REASONS TO DENY THE MOTION**

Appellants claim an expedited decision is needed because there is an ambiguous statutory scheme and to prevent substantial financial prejudice to Trinitas. To the contrary, the statute is not ambiguous, construing it would not even remedy the decision Appellants are appealing, and there is no justification presented here sufficient to privilege one dissatisfied apartment developer over the many other litigants waiting for their case to be decided in the ordinary course.

*First*, Appellants' first argument fails to point to a statutory ambiguity that, if resolved, would remedy the decision for which they now seek appellate review. Appellants' complaint with the circuit court decision is its failure to dismiss the DDRC appeal for a lack of standing. See, e.g., Mot. Expedite, 4 ("As set forth in Appellants' Motion to Dismiss and final appellate briefs considered by the circuit court, Association lacks standing to bring all claims.") & 8 ("Similarly, here, Appellants contend (i) the circuit court's order improperly and unnecessarily extended principals of standing in contradiction to the Supreme Court's ruling in Carnival Corp. v. Historic Ansonborough Homeowners Association, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014), . . ."). However, to cram their demand for preferential treatment into an analytical frame that serves more than just the parochial interests of one apartment developer, Appellants argue expedite review furthers legislative intent because the DDRC appeal "has been pending for nearly two years, despite legislative directive for expedited judicial review of cases of this type." Mot. Exped., 4 (citing S.C. Code Ann. § 6-29-930(A)). That is *not* what Section 6-29-930(A) says, but even if it did, that belies the fact that what Appellants want here is not a decision instructing circuit courts to decide DDRC matters more quickly. What Appellants seek here is a decision that University Hills lacked standing to make the arguments it made, which the circuit court adopted. Cf. Mot. Exped. 4 (arguing expedited treatment is warranted "... especially where the challenging party lacks standing in the first place."). While this entire motion is couched in terms of giving effect to Section 6-29-930(A), that statute has *nothing* to do with the appeal pending before the Court. Appellants urge the Court to expedite this case because "[o]therwise, an appeal could take multiple years to work its way through the appellate process[.]" Mot. Exped., 6. Thus, Appellants' motion has little to do with a delay in the circuit court (delay they are principally responsible for) and even less to do with Section 6-29-930(A). Essentially Appellants' motion complain is that *this* Court's

review might take too long. This is pure conjecture and such a theoretical concern by one demanding litigant is not a meaningful legal distinction capable of justifying special treatment.

*Second*, Appellants' effort to bootstrap a generalized grievance over the time it took the circuit court to hear the DDRC appeal into an expedited decision here is predicated on a reading of Section 6-29-930(A) to purports to require something it does not. The statute reads, in relevant part: "*At the next term of the circuit court or in chambers upon ten days' notice to the parties*, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings." S.C. Code Ann. § 6-29-930 (emphasis added). The first clause is the only discussion concerning scheduling. It does not set a deadline for the circuit court; to the contrary, it gives options: hear the matter during the next available term of court or in chambers. Notably, when the South Carolina Code of Laws requires something to happen in court on a particular day and it cannot happen, there is no grievous injury or reversible error, it is simply carried over to the next available term:

No process pending in any court shall be discontinued for or by reason of the failure to hold the court upon the day appointed by law. In such case all suits, process, matters and things depending shall be made to the next succeeding court in course in the same manner as if such succeeding court had been the same court to which such process stood continued or such returns or appearances should have been made.

S.C. Code Ann. § 14-1-110. Thus, if the circuit court cannot schedule a matter on a particular term, by operation of law, it simply gets scheduled for the next available term. As to the procedure to hear an appeal in chambers, there is no temporal deadline associated, simply a notice obligation.

Yet, after quoting Section 6-29-930(A), Appellants launch into a discussion of cases of little relevance. Appellants cite Ward v. S.C. Dep't of Soc. Servs., 427 S.C. 197, 206, 829 S.E.2d 718, 723 (2019), which they acknowledge turned on use of the term "expedited" (Mot. Exped., 5),

a term not used in Section 6-29-930(A). They cite Chesapeake B &M, Inc. v. Hardfort County, Md., 58 F.3d 1005, 1011–12 (4th Cir. 1995), for a discussion concerning “prompt judicial review,” but neglect to explain that the federal appeals court was concerned with whether a local ordinance that authorized a municipality to deny or suspend operation of an adult bookstore was sufficiently prompt to pass muster under First Amendment scrutiny of prior restraints on speech. Id. at 1011–12. There is no First Amendment interest implicated by Appellants’ apartment project. From these irrelevant cases, Appellants conclude about Section 6-29-930(A) that the legislature “clearly intended appeals from a board of architectural review to be resolved speedily.” Mot. Exped., 6.

When a statute is plain and unambiguous and conveys a clear and definite meaning, a court has no right to construe the statute and impose another meaning. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “If the legislature’s intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute.” Id. at 87, 533 S.E.2d at 582. Hear, Appellants seek a new meaning outside the statute. They note the legislature “mandated an appeal to be filed within thirty (30) days of an aggrieved party’s actual noticer of the decision.” Mot. Exped., 6 (citing S.C. Code § 6-29-900(A)). But that happened: University Hills appealed the DDRC’s Design Approval Decision and obtained a favorable decision. Appellants argue “the Legislature required that a hearing on the merits be made at the ‘next [available] term of the circuit court or in chambers upon ten days’ notice to the parties.” Mot. Exped., 6 (quoting S.C. Code Ann. § 6-29-930(A)), bracket original). That also happened. Note that, unlike the 30-day deadline to appeal, the statute gives a circuit court flexibility to schedule at the next available term of court or in chambers. What Appellants wrongly presume is there should be some hard deadline for the circuit court to have scheduled a merits hearing so the DDRC appeal could have been resolved more quickly. The rules of construction presume the legislature is familiar with the entire statutory

scheme and requires reading a scheme together in harmony if possible. See Hodges, 341 S.C. at 88, 533 S.E.2d at 583. Certainly, had the General Assembly intended there to be a hard deadline, it could have done precisely as it did with the deadline to appeal and set one. It did not, and the statute is quite clear in that respect. Accordingly, there is no need for the Court to upend its docket and rush to “clarify” a scheme that lacks an ambiguity.

*Third*, Appellants have shown no special or compelling harm they will suffer as a result of not being able to build apartments if this appeal is not expedited. Just one of the three appellants, private corporation Trinitas, cites its purchase of land, time spent in meetings with community stakeholders, and development and legal costs as purported evidence of “substantial financial prejudice” it might suffer (see Mot. Exped., 9), but the same could be said of any design review appeal. Perhaps Trinitas could have or should have structured its project in a way to avoid some of those costs until after design approval was obtained; but that is not the sort of inquiry this Court is typically bothered with and there is no record on the issue.<sup>1</sup> Appellants cite a motion filed by a county government in another case in a dispute with the state Department of Revenue (see Mot. Exped., 9), but the arguments are not fully explained and other order granting expedited treatment is not cited; Appellants simply assume it supports them receiving special treatment too. However, that dispute between two public governmental bodies has little bearing on this appeal where one private corporation is complaining about its cost outlays and holds that up at evidence to rush to the front of the docket. There is no suggestion that any public body in this dispute will suffer any financial harm or prejudice by this appeal proceeding as usual and crediting Appellants view here would simply allow *any* potential construction project to also be heard out of turn.

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<sup>1</sup> Respondents object to Appellants effort to create a one-side, untested record through the submission of affidavit testimony.

Finally, Appellants seek to heighten the importance of their special interest by analogizing it to expedited reviews of the termination of parental rights, adoption proceedings, minor custody disputes, election disputes, and disputes concerning the use of public funds. See Mot. Exped., 7. These cases offer no parallel. This is a design dispute over an apartment building. No child harm or democratic disorder will befall the community if Appellants are unable to build an apartment building while this appeal is considered. Instead, there are many much more weighty matters, like criminal cases affecting the liberty of individuals, that would be forced to wait to take up this apartment building dispute. So too with the many other business disputes that came to this Court first, which would be forced to wait if Appellants have their way.

### CONCLUSION

Appellants offer platitudes about efficiency and judicial economy (see Mot. Exped., 7–8), but should have considered the drain on judicial economy posed by unremarkable motions like this one that force judges to stop working on decisions to consider whether one litigant should be heard out of turn. Appellants’ leading case on the standing issue they are appealing is Carnival Corp., which they also cite here. See Mot. Exped., 8–9. However, that case received original jurisdiction, which is a matter of discretion for the Supreme Court. It is not a license for this Court to advantage the few to the detriment of the many. Appellants have *also* moved the Supreme Court to transfer this case to its docket so, if that Court deems this to be an urgent matter (it is not), it can take jurisdiction of it. In the meantime, Appellants offer no convincing argument to short-circuit briefing and the decisional process.

For the reasons set forth above, the motion to expedite should be denied.

[signature page follows]

Respectfully submitted by,

s/Richard A. Harpootlian

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**CERTIFICATE OF SERVICE**

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I, Richard A. Harpootlian, certify that I have served by U.S. Mail (with a courtesy copy via electronic mail) a copy of Plaintiff/Respondent's Return in Opposition to Motion for Expedited Appellate Review to the following attorneys on April 11, 2022.

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