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**May 31 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Maite Murphy, First Judicial Circuit

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Appellate Case No. 2022-000419

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Molly M. Morpew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

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**INITIAL BRIEF OF THE RESPONDENTS**

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## STATEMENT OF THE CASE

On March 8, 2022 and March 25, 2022, the Honorable Judge Maite Murphy, of the First Judicial Circuit in Dorchester County, dismissed two Rule 59(e) Motions to Reconsider filed by the Appellant. The first Motion to Reconsider was filed on September 7, 2021 (hereinafter September Motion). Incorporated in Appellant's September Motion was a motion for default judgment against Respondents. Appellant's September Motion was asking the lower court to amend or reconsider the Order issued on August 23, 2021 (hereinafter August Order), which arose the hearing that took place on May 26, 2021. The September Motion argued several issues with the August Order. Ultimately, Appellant wanted the lower court to amend the entirety of the August Order and change its findings and agree with arguments Appellant raised at the May 26, 2021 hearing, thereby holding Respondents in default. On March 8, 2022, Judge Murphy issued an Order that dismissed the Appellant's September Motion to Reconsider. The lower court ruled that "all arguments properly raised to the Court have already been ruled upon" and declined to alter its August Order. Judge Murphy made this ruling based on the briefs filed by the parties, taking into consideration Appellant's September Motion and Respondent's Memorandum in Opposition of Appellant's September Motion.

In response to Judge Murphy's denial of Appellant's September Motion, Appellant filed another Rule 59(e) Motion to Reconsider on March 18, 2022 (hereinafter March Motion). Five days later, on March 23, 2022, Appellant filed a Memorandum in Support of the March Motion (hereinafter Memorandum). In Appellant's March Motion, she asked the court to reconsider the court's March 8, 2022 Order dismissing Appellant's September Motion. In Appellant's March Motion, Appellant stated that there was no case law regarding an order dismissing a motion to reconsider and argued, again, why the lower court should amend or reconsider its August Order.

In Appellant's Memorandum, she argued that because the lower court dismissed the September Motion, rather than denying it, her issues raised would not be preserved for her to appeal. In this second motion to reconsider and Memorandum, Appellant continues to revisit the reasons she initially presented in her September Motion, i.e. why the lower court should amend and reconsider the August Order. Before Respondents could draft and file a memorandum in opposition to Appellant's March Motion, Judge Murphy dismissed Appellant's March Motion, for the same stated reason as the lower court's dismissal of the September Motion.

Respondents posit to this court that Appellant has raised this appeal for the sole purpose of delaying the resolution of the litigation that is the subject of this appeal and for the nefarious purpose of forcing the Respondents to incur additional legal fees and expenses. During the time of this duration of the instant litigation (more than 3 years) there have been two hearings regarding the motions filed by the parties. The case was scheduled for trial in February 2022, but Appellant requested an order of protection, which the lower court granted. Before Appellant's notice of appeal, the lower court had put six, pending motions on the roster to be heard, including Defendants' motion for summary judgment. The lower court continued this hearing when Appellant filed her notice of appeal. Appellant has further delayed these proceedings by countless filings and motions, and now, filing an appeal regarding her September and March Motions. Appellant is using the courts to seek default judgment against Respondents after being denied the same request on two separate occasions.

For this Court's convenience, the following is an outline of the procedural history of this case. Omitted from the below outline are: letters, changes in address, certificates of service, roster notices, and any other filings that Respondents deem irrelevant to the matter at hand.

1. September 19, 2018 – **Appellant** filed Summons & Complaint.

2. January 25, 2019 – **Appellant** filed Affidavit in Support of Fees and Costs and Losses.
3. January 25, 2019 – **Appellant** filed Motion for Default (*completed on April 4, 2019*).
4. February 7, 2019 – **Appellant** filed Request for Expedited Consideration.
5. April 4, 2019 – *Order denying Appellant's Motion for Default.*
6. April 17, 2019 – **Appellant** filed Motion to Reconsider (*completed on June 21, 2019*).
7. April 29, 2019 – **Appellant** filed Affidavit of Service for Respondents.
8. April 29, 2019 – **Respondents** filed Motion to Dismiss (*hearing on October 2, 2019, but no Order was ever given*).
9. May 28, 2019 – **Appellant** filed Motion to Dismiss and Default Judgment (*hearing on October 2, 2019, but no Order was ever given because Appellant filed an Amended Complaint on March 12, 2020*).
10. June 24, 2019 – *Order denying Appellant's Motion to Reconsider dated April 12, 2019.*
11. August 12, 2019 – **Appellant** filed Motion and Injunction to Compel Respondents to Return Water or Water Easement to Property (completed on October 2, 2019).
12. August 12, 2019 – **Respondents** filed Memorandum to Support Motion to Dismiss (*hearing on October 2, 2019, but no Order was ever given*).
13. August 26, 2019 – **Appellant** filed Memorandum in Opposition of Respondents' Motion to Dismiss (*hearing on October 2, 2019, but no Order was ever given*).

14. October 2, 2019 – Hearing on Respondents Motion to Dismiss, Appellant’s Motion and Injunction to Compel Respondents to Restore Water or Water Easement, and Appellant’s Motion to Dismiss and Default Judgment.

15. March 12, 2020 – **Appellant** filed Amended Complaint.

16. March 26, 2020 – **Respondents** filed Motion to Dismiss Amended Complaint (*hearing on May 26, 2021*).

17. April 13, 2020 – **Respondents** filed Motion to Dismiss (*hearing on May 26, 2021*).

18. April 14, 2020 – **Appellant** filed Response to Respondents’ Motion to Dismiss Amended Complaint dated March 26, 2020.

19. April 27, 2020 – **Appellant** filed Response to Respondents’ Motion to Dismiss dated April 13, 2020.

20. May 6, 2020 – **Appellant** filed Motion to Strike Respondents’ Motion to Dismiss, Sanctions, and Default Judgment (*hearing on May 26, 2021*).

21. June 5, 2020 – **Respondents** filed Motion for Protection from Discovery Requests (*hearing on May 26, 2021*).

22. July 27, 2020 – **Appellant** filed Response to Respondents’ Motion for Protection from Discovery Requests.

23. August 4, 2020 – **Appellant** filed Motion to Deem Admissions Admitted (*hearing on May 26, 2021*).

24. May 26, 2021 – Hearing on Respondents Motion to Dismiss, Appellant’s Motion to Strike, Respondents Motion for Protection from Discovery Requests, and Appellant’s Motion to Deem Admitted Requests for Admission.

25. June 3, 2021 – **Respondents** filed Memorandum in Support of Motion for Protection from Discovery Requests.
26. June 14, 2021 – **Appellant** filed Motion to Compel Discovery Responses.
27. July 23, 2021 – **Appellant** filed Request for Order of Protection (*completed on August 9, 2021*).
28. August 23, 2021 – *Order issued from May 26, 2021 hearing; denying Respondents Motion to Dismiss Amended Complaint, denying Appellant's Motion to Strike Respondents Motion to Dismiss, granting Respondents Motion for Protection on Discovery Requests, and denying Appellant's Motion to Deem Admitted Requests for Admission.*
29. September 3, 2021 – **Respondents** filed Answer to Amended Complaint.
30. September 7, 2021 – **Appellant** filed Motion to Reconsider Order issued on August 23, 2021 (*completed on March 8, 2022; dismissing Appellant's Motion*).
31. September 13, 2021 – **Appellant** filed Motion for Default Judgment.
32. October 6, 2021 – **Appellant** filed Motion for Extension to Respond to Discovery Requests.
33. October 13, 2021 – **Respondents** filed Memorandum in Opposition of Motion to Reconsider Order issued on August 23, 2021.
34. February 4, 2022 – **Respondents** filed Motion to Compel Discovery Responses.
35. February 4, 2022 – **Appellant** filed Motion for Protection Order (*completed on February 7, 2022; granting Appellant's Motion until March 31, 2022*).
36. February 16, 2022 – **Appellant** filed Motion for Rule to Show Cause and Continuous.

37. February 16, 2022 – **Appellant** filed Memorandum in Support of Motion for Extension to Respond to Discovery Requests and Answer Respondents’ Motion to Compel Discovery Responses.

38. February 17, 2022 – *Order granting Appellant’s Protection.*

39. February 23, 2022 – *Order granting Respondents’ Protection.*

40. March 8, 2022 – *Order dismissing Appellant’s September 7, 2021 Motion to Reconsider.*

41. March 18, 2022 – **Appellant** filed Motion 59(e) to Alter or Amend March 8, 2022 Order dismissing Appellant’s Motion to Reconsider (*completed March 25, 2022, dismissing Appellant’s Motion*).

42. March 23, 2022 – **Appellant** filed Memorandum in Support of September 13, 2021 Motion for Default.

43. March 23, 2022 – **Appellant** filed Memorandum in Support of March 18, 2022 Motion to Reconsider.

44. March 25, 2022 – *Order dismissing Appellant’s March 18, 2022 Motion to Reconsider.*

45. March 30, 2022 – **Respondents** filed Motion for Summary Judgment and Affidavits.

46. April 1, 2022 – **Respondents** filed Memorandum in Support for Motion for Summary Judgment.

47. April 4, 2022 – **Appellant** filed Notice of Appeal.

In Appellant’s Initial Brief, she argued, as provided in her March Motion, issue preservation and no case law dismissing motions to reconsider. Appellant contends, by the

dismissal of her September and March Motions and failure to be heard, she is prejudiced. According to the August Order, the issues raised in Appellant's September and March Motions about standard of review, error of fact findings, default judgment, and many more, have already been properly ruled upon. Appellant is seeking this Court to overrule the lower court's dismissals of her September and March Motions and allow her arguments to be heard, again.

### **ARGUMENT**

Respondents have been named to several other litigation matters brought by the Appellant. Respondents have been defending litigation against the Appellant for nearly a decade. Respondents have spent an excessive amount of money through the process. Appellant has continuously delayed these proceedings from going forward, requiring Respondents to spend more money and not being any closer to an outcome. Appellant has had it out for Respondents since the first complaint against Respondents in 2012, which has given rise to Appellant's current claims against Respondents in this case.

Based on the history between the parties and the years of litigation, Respondents would ask this Court to affirm the order of the lower court and deny Appellant's appeal for the lower court to amend or reconsider the orders dismissing Appellant's September and March Motions.

#### **I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW ARE UNNECESSARY ON DECISIONS OF MOTIONS.**

In *Kinghorn as Trustee for the Mildred Ann Kinghorn Trust dated 28 April 2004 v. Sakakini*, the Court heard an appeal regarding the circuit court's denial of Sakakini's Rule 59(e) motion to reconsider the circuit court granting Kinghorn's motion to enforce the settlement. 426 S.C. 147, 825 S.E.2d 748, 750 (Ct. App. 2019). The Court quoted Rule 52(a) of South Carolina Rules of Civil Procedure,

in all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon .... Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in rule 41(b). *Id.*

Rule 41(b), SCRCF, states:

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff in an action tried by court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

In *Kinghorn*, the Court found the circuit court did not err in omitting findings of fact and conclusions of law because it is unnecessary for any motion except in motions dealing with involuntary dismissal. *Id.*

Appellant argues the lower court failed to find facts specially and separate in its conclusions of law when Judge Murphy dismissed both Appellant's September and March Motions. To support Appellant's argument, she quotes *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127, 128 (S.C. 1992), regarding an order failing to set forth the findings and the reason for those findings as required by 17-27-80 and Rule 52(a). But *Pruitt* is not a persuasive argument regarding the facts of this case. In *Pruitt*, the petitioner had filed for writ of certiorari after the hearing, judge denied petitioner's application for post-conviction relief. 310 S.C. 254, 423 S.E.2d 127 (S.C. 1992). The judge denied the application after a hearing. *Id.* The Appellant quotes the Court's decision in *Pruitt* to further support her argument for a hearing regarding her September and March Motions and the lower court should state their findings under Rule 52(a). This Court should not follow *Pruitt* as persuasive law as it is an order regarding criminal appeal to denying post-conviction relief after a hearing, without a Rule 59(e) motion being filed. In this case, it is a civil matter and Appellant has not only filed one Rule 59(e) motion, but two. Further, based on Rule 52(a), findings of fact and conclusions of law are unnecessary on decisions of motions that are not under Rule 41(b), SCRCP.

Appellant filed two Rule 59(e) motions, thus, the lower court does not have to state its findings of fact and conclusions of law. In *Noisette v. Ismail*, the Court stated "where a trial court substantially complies with Rule 52(a) and adequately states the basis for the it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding." 304 S.C. 56, 403 S.E.2d 122, 123-24 (S.C. 1991). Therefore, the lower court has complied with Rule 52(a) and it's not required to state findings of facts and conclusions of law. Thus, this Court should affirm the lower court's judgment dismissing Appellant's September and March Motions.

## II. ISSUES HAVE BEEN PRESERVED BY THE AUGUST ORDER.

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Court with a platform for meaningful appellate review. *Stevens & Wilkinson v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693, 695 (S.C. 2014). An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. *Id.* A party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not. *Id.* An issue may not be raised for the first time in a motion to reconsider. *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567, 570 (S.C. 2009). Error preservation requirements are intended to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (S.C. 2000).

Appellant contests the dismissal of her September and March Motions and argues that the lower court's dismissal of the same prevents the issues raised therein from being preserved. This assertion by Appellant is false, and consequently, renders the appeal moot. The arguments Appellant raised in her September and March Motions have already been heard and argued at the May 26, 2021 hearing. Appellant filed a Motion to Strike Defendant's Motion to Dismiss (hereinafter Motion to Strike) on May 6, 2020. Appellant's Motion to Strike was heard on May 26, 2021 in front of Judge Murphy, which was the hearing that led to the August Order. In Appellant's Motion to Strike, Appellant made the same arguments regarding Respondents Motion to Dismiss Amended Complaint and default judgment that were contained in her September Motion and, again, in her March Motion. Since the arguments had been made in Appellant's Motion to Strike, and it was heard at the May 26, 2021 hearing, the issues have been ruled upon and preserved for this Court.

Second, even if this Court decides Appellant's issues were not raised in previous motions or heard by the lower court, Appellant could not bring those issues in a Rule 59(e) motion for the first time. Those issues would have needed to be raised at the hearing. However, Judge Murphy dismissed Appellant's September and March Motion for arguments been ruled upon, the issues are not being brought for the first time. The issues raised and argued by Appellant in her Motion to Strike and September and March Motions are already preserved for appellate review by the issues argued, heard and ruled upon.

Appellant also argues the dismissal of her September and March Motions would force her to waive her rights to issue and error preservation. Again, not so. The lower court considered all relevant facts, law, and arguments raised by both parties and decided to dismiss Appellant's September and March Motions. The lower court found no errors in the August Order and all issues raised by Appellant had been ruled upon. Appellant's argument that she would be forced to waive her rights to issue and error preservation is moot; Appellant's issues and errors have been preserved.

Accordingly, this Court should deny Appellant's appeal to have the lower court reconsider and/or reverse the dismissal of her September and March Motions because Appellant's issues and errors have already been preserved from the previous motions, arguments, hearings and rulings in the Circuit Court.

**III. THIS COURT SHOULD AFFIRM THE ORDER OF THE LOWER COURT BASED ON THE GROUNDS RELIED UPON BY THE LOWER COURT.**

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. "Respondent's brief may

also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c).” Rule 208(b)(2), SCACR. As the prevailing parties, the Respondents would request that this Court affirm the Dismissal Orders for any grounds appearing in the record, whether they based on collateral estoppel, mootness, statute of limitations, or any other legal theory.

Appellant has already been heard regarding the issues raised in her September and March Motions and this appeal. Appellant has delayed the lower court proceedings from going forward by filing this frivolous appeal. The lower court has acted proper in dismissing Appellant’s September and March Motions by reading the parties’ memorandums and stating the lower court’s findings. This Court has the authority to affirm the dismissal of the lower court’s Dismissal Orders and is requested to do so.

### CONCLUSION

For the reasons Respondents argue above, this Court should deny Appellant’s appeal on the grounds the lower court was not required to state findings of fact and conclusions of law and Appellant’s issue preservation is moot because the issues have been preserved. This Court should affirm the lower court’s ruling to dismiss Appellant’s September and March Motions for the arguments made have already been ruled upon and did not require any further ruling.

SMITH | CLOSSER, P.A.

s/Zachary J. Closser

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May 31, 2022

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The Honorable Maite Murphy, First Judicial Circuit

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Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

**CERTIFICATE OF SERVICE**

I certify that, on the date indicated below, I served the Respondents' Initial Brief and Designation of Matter by United States Mail, postage prepaid, on the following:

Molly M. Morphew  
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*Appellant*

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May 31, 2022

The Honorable Jenny Abbott Kitchings  
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RE: Molly M. Morphew, Appellant v. Stephen Dudek, et al., Respondents  
Appellate Case No. 2022-000419  
S/C File No. 19-106

Dear Ms. Kitchings:

Enclosed please find the Respondents' Initial Brief, Designation of Matter, and certificate of service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Zachary J. Closser

ZJC/enh

cc: Molly M. Morphew