

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Shirley A. Johnson-Lepel
Clerk

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30829

MELANIE HALL-EDWARDS,

Defendant and Appellant,

Vs.

CITY OF SCOTLAND, A MUNICIPALITY,

Plaintiff and Appellee.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
BON HOMME COUNTY, SOUTH DAKOTA

HONORABLE CHERYLE GERING
CIRCUIT JUDGE

APPELLANT'S BRIEF

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30829

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Notice of Appeal Filed September 9, 2024.

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STATE OF SOUTH DAKOTA

No. 30829

CITY OF SCOTLAND, A MUNICIPALITY,

Plaintiff and Appellee,

Vs.

MELANIE HALL-EDWARDS,

Defendant and Appellant.

PRELIMINARY STATEMENT

For the convenience of the Court the Appellant and Defendant, Melanie Hall-Edwards is referred to as "Melanie". Appellee is City of Scotland as "Scotland". The recorded filings of Complaints filed by Scotland November 3, 2023, is C. Exhibits filed with C are CE. Affidavits on record are A. Engineer Duane Boice is "Boice". The July 28, 2022, August 11, 2023, and June 6, 2024 Reports completed by Duane Boice of Engineering & Technical Services Inc., are DB22, DB23, and DB24, respectfully. Code Enforcer, Geoffrey Fillingsness is GF. Curtis Hofer, Former Mayor of Scotland, as "Hofer". Answers to Complaint and Request, and Correspondence filed January 16, 2024 is R. Counsel for the Plaintiff and Appellee, Michael Stevens is MS. Counsel for the Defendant and Appellant, Austin Felts is "Felts". The Honorable Judge Gering is "Judge". Judge's Orders and Inspection warrants are JO and JI, respectfully. The Transcript for Motion Hearing of July 30, 2024 is T. At the time of writing this Brief, it is unknown if Appellant's Motion to Support the Record, submitted

to the Supreme Court case no. 30829, will be granted in full or in part. For the sake of inclusion and fairness in this matter of historical importance, it will be used as if it were granted. Time does not allow for a revised Brief if it should be denied in part. The Motion to Supplement Record is SR. Affidavit in Support of the SR is ASR. All references will be followed by appropriate page numbers, paragraphs, exhibit markings and date filed, when applicable.

JURISDICTIONAL STATEMENT

On July 27, 2022 Administrative Inspection Warrant, forcible entry, was filed. Subsequent orders were filed on December 4, 2023, January 7, 2024. On August 7, 2024 Circuit Court filed the notice of Entry of an Order Granting Plaintiff's Motion for Demolition of 610 & 620 West Main Street, Scotland, SD, a *Contributing Property* of National Historical Registry of the United States. All orders were filed by Honorable Judge Cheryle Gering, Circuit Judge, First Judicial Circuit in Bon Homme County Civil Court 04CIV22-000046.

STATEMENT OF LEGAL ISSUES AND AUTHORITY

I. Whether the Trial Court erred in granting Plaintiff's June 10, 2024 Motion.

Relevant Cases:

Bourjaily v. United States, 483 U.S. 171 (1987).

Daubert v. Merrell Dow Pharmaceuticals, Inc.,
509 U.S. 579 (1993).

Sheehan v. Daily Racing Form, Inc., 104 F.3d 940,
942 (7th Cir. 1997).

Kumho Tire Co. v. Carmichael, 119 S.Ct. 1167,
1176 (1999).

- II. Whether the Trial Court erred in deeming 610 and 620 West Main Street Scotland SD constituted a nuisance.**
- III. Whether the Trial Court erred in ordering a demolition of a Nationally Registered Historic Contributing property rather than a plan to abate a nuisance.**
- IV. Whether the Trial Court erred in evidence used for ruling(s).**
- V. Whether Defendant and Appellant was deprived of their right to due process given the status of legal representation.**

STATEMENT OF CASE

In Case 04CIV22-46 an Administrative Inspection Warrant was filed July 8, 2022, alternate warrant was filed and granted on July 11, 2022. The original AIW denial was filed and denied on July 15, 2022. On July 26, 2022 an additional AIW and A in Support of AIW were filed, according to the Case Summary provided by the Clerk. An Administrative Inspection Warrant for the property at 610 west Main Street, Parcel 51.01.14.10, Scotland, SD, marked by the Clerk as filed July 27, 2022, which does not appear on the Clerk Case Summary, was taped to Melanie's door at 1030 First Street, Scotland, SD after its execution, by breaking in, on July 28, 2022. A Summons and Complaint were filed on November 3, 2023 by Scotland. The Answer and Request(s) by Melanie created two (2) entries, one redacted and the other sealed from public, date of filing January 16, 2024. An Order with instructions to Clerk from Judge as to how to file them was filed January 17, 2024. A Motion to Demolish and Inspect for Asbestos/Harmful Material at 610-620 Main Street was filed by Scotland along with Affidavits from GF, a Report from Boice (on it hand-written

“exhibit B Photos on Thumb Drive”). No copy of the thumb drive or photos was given to Melanie at that time. Notice of Appearance by Beau Barrett (BB) for Melanie on July 16, 2024. Withdrawal of BB on July 29, 2024. Notice of Substitution of Counsel, by Austin Felts for the Defendant, the morning of the Hearing and a Motion for Continuance following. The Court denied the Motion and the Hearing proceeded. Judge ruled in favor of the Plaintiff and Appellee.

BACKGROUND OF CASE

Additional details and reference will be in the STATEMENT OF FACTS section. Melanie has lived in Scotland for most of her life. In the last 20 years or so, she has had to leave off and on, due to harassment from the City and their gov't agencies such as law enforcement. Many of the threats were following Melanie's refusal to sell her acreage and other properties to the person(s) threatening at the given time. It became more and more frequent and more intense until it escalated out of control. In 2020 and 2021 the Mayor, Hofer, repeatedly threatened to take her properties and did take a portion of one to put gravel through the center at which time he spoke the threat that would lead us here. Hofer saying, he [didn't] “give a __ about South Dakota law!” and though he'd “prefer to burn all of [your] places down” he'd hire someone to condemn them. Stating “everything is condemnable.”, “I will find the person and hire them” to get rid of you. He then hired GF. Melanie was physically pushed out of the Courthouse by Scotland PD and several other men, was pulled over by a Deputy for the reason of “I've heard all about you!”. She was threatened on multiple occasions by several others, to be “Stripped down and taken in”. All of these and more were becoming commonplace

whenever she was in Scotland. In Spring of 2023, one evening, Scotland PD and a Deputy unreasonably ran sirens, lights, racing around the corner screeched up to her home. The back door was being forced open which eventually was opened. The threats from the Scotland PD with his hand on his weapon and flashlight in her eyes, that night caused Melanie to flee and not return until given permission by Counsel for the City of Scotland, MS. The incident examples, of types of harassment against Melanie, are recorded in the correspondence of the non-redacted copy filed January 16, 2024 of R, Pages 1-4 of Exhibit C as is the other information of this section.

STATEMENT OF FACTS

On July 30, 2024, in First Judicial Circuit Court case 04CIV22-46, the Court made its first ruling denying the Defendant's Motion to Continue offered by Felts, who had just been retained for substitution of counsel. Judge's decision was that "understand[ing] that Mr. Felts just recently was formally retained in this matter, but the Court also weighs that against the concerns for public safety with the statements", made by Stevens, "that bricks have been falling causing a gas leak"... "that outweighs anything else , because public safety is a primary concern.". (T pg.8, Lines [L]1-8). The Court gave the definition for Nuisance SDCL 21-10-1 as "something that annoys, injures, or endangers the comfort, repose, health, or safety of others." (T pg.140,L12-14). Court noted that based on testimony of Boice and GF, citing specific portions of their testimony on pgs. 141-145, inclusive of T and citing specific portions of Melanie's testimony in pgs. 146- 150 (L 1-5, of which the court notes that because of the frustration caused by lacking communication of both sides, the

court did not find there to be a good-faith effort on the part of the Defendant/Appellant and would not allow additional time to do any abatement, should law allow.) Specific points of testimony of the Colloquy mentioned here will be noted in the Argument section. The Court declared the property a Nuisance and Granted the Motion for Demolition. (T pg. 150-151 incl).

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF'S JUNE 10, 2024 MOTION.

I will show that, Appellee, their Counsel, and others conspired to deprive a property owner from her rightful use. I will prove as told by Scotland to the Appellant, the goal of actions against Melanie were for purpose of Demolition of her properties. This may have clouded judgements and caused an unfair or err in ruling. It is at this point in the Brief I would request the Justice(s) to read the Transcript of Record in full. The Court does not record the microphones so anything left out or added to would not be noticed nor would you see the body language or hear the tone. However, I would argue it to be helpful to gain insight to the matter. The Complaint of November 3, 2023, is telling of a plan prior to the inspection of July 8, 2022. MS states on page 1, pt.3, of November 2023 C, that the 2022 Affidavit in Support of the AIW was for the possible *demolition* of 610 Main Street. At the time of the motion for AIW, 2022, no bricks had fallen and would not fall until the end of May two years later in 2024. This AIW was only for the building located at 610 Main Street and did not include the 620 Main Street building. At the time, there was no mention that Scotland or its agents intended to help the property owner understand,

abate or prevent any potential nuisance. Lack of and avoidance of communication points to intent. Boice testified that he only answered his phone the one time when the Appellant called because he did "not recognize the number" and admitted he hung up on her. (T pg. 27 L 5-6, pg.26 L12-14). When Felts asked Boice if there'd ever been text messages between him and Melanie he first says he doesn't recall. Felts states "so it's your testimony today that my client has never texted you at all?", Boice states "if you can produce a text I'll be glad to respond.". (T Pg. 27 L10-15). This clearly indicates hostility and raises the question of credibility of the witness. In the previously mentioned A of GF and throughout the Motions, Complaints and other Affidavits of this case there is always a claim that the building(s) abandoned, and that children and animals can wander in. There was no proof provided prior to the issuance of AIWs, the building was abandoned. The fact Scotland broke in with a crowbar destroying new door locks and parts of wood structure, is proof that no one can wander in. SR potential exhibits SCD9-01 and SCD9-02 show the building is not open to inviting children and animals but in fact is closed and securely locked. If a building posed danger for vermin and children getting in, a forcible entry warrant would not be necessary. Logically, the broken window, that was fixed, as testified by all three witnesses and MS, (T incl) would not allow for animals or children as it is high up on the second floor. This is clearly shown in several pictures by MS marked ME1-ME24. The AIW issued July 27, 2022, executed July 28, 2022, was for 610 Main Street only. The Plaintiff and Appellee unlawfully entered 620 Main Street, Scotland, SD that day. Prior to this date, but shortly after purchasing 610 Main, Melanie

was repeatedly requesting permission to work on this building and started doing repairs by tuckpointing the bricks on east side of 610 Main before being told to do so by Scotland. (T Pg. 105 L 23-25, Pg. 106 L 1-3). This is "good faith". Boice testifies in the 2022 inspection the "floors walked fairly solidly, meaning they didn't bounce when I walked on them. I didn't see any structural problems on the interior as much as on the exterior walls." (T pg. 24 L1-10). This is the only time Boice enters the buildings. Boice testified there were birds getting in from the broken window and that it is now fixed and would alleviate some of the concerns with things getting inside the building. (T Pg.22 L24, Pg. 23 L22-25). In a Q&A Felts tries to find out how Boice is certain the whole building is rotted. Boice responds that it's a "logical assumption". As an expert witness he is required to show he knows more than an uneducated layperson. His findings are to be based on *Scientific Methods* and are *not a matter of* opinion. (Reference, 28 USC App FedR Evid Rule 702). *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) impacted the amendment to Rule 702 charging Trial Judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony. *Kumho Tire C. v. Carmichael*, 119 S. Ct. 1167, 1176 (1999) in a proposed amendment for rule 702, the Committee Note to the amendment affirms the trial court's role as gatekeeper and provides some general standards that the trial court must use to assess the reliability and helpfulness of proffered expert testimony. The admissibility of all expert testimony is governed by the principles of Rule 104(a). Under this rule the proponent has the burden of establishing that the pertinent admissibility requirements are met by the preponderance of the evidence. *Bourjaily v. United*

States, 483 U.S. 171 (1987). When asked why the brick hasn't fallen off other parts of the building if the assumption is that it is all the same and Boice replies, "I can't tell you that. I – I don't know. That is why you'd do an investigation and remove the brick.". Boice testifies he observed the "roof structure that had been repaired after a fire, and that appeared adequate.". (T Pg.11 L6-8). Given his experience in "trusses" (T Pg.10 L5-6), one could conclude he is qualified to make this statement in testimony and on DB22. In opposing the continuance MS states one of the urgent reasons we must proceed is because "if her building permit is for the façade of the building, not the structural inside of it-it has fire damage.". (Pg. 7 L21-22) He did so knowing that his witness would be testifying that it was adequately repaired. DB22, having established that it was the only time Boice was on the interior of the structure, also states in the ninth (9) entry of 'Observations' that *The floors all felt stable*, however on July 30, 2024, he testifies everything inside is rotting due to moisture and that the "floorboards are deteriorating but the center part of structure is more sound".(T Pg.15 L14-15). It is impossible to substantiate his testimony having not returned to the interior of the building. A reasonable person would conclude that, due to this contradiction, Boice's testimony of July 30, 2024, is not credible. I would argue the Judge did not weigh evidence as there was no evidence but only "logical assumptions" and as the gatekeeper should not have weighed this testimony or possibly should not have allowed it. In *Daubert* it is mentioned the question of reliability is based on the factor of whether the expert is "proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or

whether they have developed their opinions expressly for the purposes of testifying.” Boice goes on to say he has not been in the “interior foundation”. No Scientific method was produced nor was further research conducted on the interior of the buildings; therefore, it could be concluded Boice’s opinion grew from and for the purposes of testimony on behalf of the Plaintiff/Appellee. [Daubert v. Merrell Dow Pharmaceuticals, Inc., 43 F.3d 1311, 1317 (9th Cir. 1995).] He also states repeatedly and, in all reports, DB22, DB23, and DB24, that the foundation is sinking and is getting worse. Here he references the brick façade, on the East side of 610 Main south of the middle entry door, which is not part of the foundation, being the indication of an unstable foundation. The area observed and noted in ME4 is the same as it was in the first submissions of 2022, 2023, and 2024 complaints and photos. Melanie does not have access to all of them at the time of composing this brief but would refer to the exhibits on file that are easily comparable. I argue that without going into the building you would not be able to conclude the foundation has sunken further because the façade has not measurably shifted, and no one has observed the foundation from the interior. Boice has not entered the building to confirm his speculations that the conditions of the floors, walls, or any parts of the superstructure have deteriorated. These things cannot be observed from the exterior. Mr. Boice told Melanie just that when he came in 2022. It would be likened to vinyl siding blowing off your house. It would expose the structure but not have an impact unless left to the elements for a long period of time. Boice testified that the superstructure has been exposed to moisture when talking about the fire damage where the ceiling was

taken, and trusses were fixed and that at some point a heavy snow load and would easily cause collapse. Boice testifies the only way to know if the walls are good is to deconstruct them. It is an outlandish statement to say the least. *Sheehan v. Daily Racing Form, Inc.*, 104 F3d 940, 942 (7th Cir. 1997) cites the expert's testimony should be "as careful as he would be in his regular professional work outside his paid litigation consulting." It is hard to believe the expert Boice is regularly "deconstructing" buildings by removing all of its façade, sheathing and sheetrock to observe it is not rotten. This would leave the expert with one option, if not to deconstruct, and that is to revisit the areas first observed when he concluded that the building was not failing or unsound. Having not done so, Boice fails to act as he would outside of paid litigation consulting. This testimony, as all of it, was merely an opinion and there was no submission of measurements or calculations. In the Scotland City Code chapter 8, referenced in several documents submitted by the Plaintiff/Appellee, there is the definition of a *dangerous building*. When claiming the danger to be the building could *collapse* it would require at least one of the following Scotland City Code 8.0316 titled "Dangerous Buildings Defined" to apply:

- 1) The interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- 2) Those which, exclusive of the foundation, show thirty-three percent (33%) or more damage or deterioration of the supporting member or members, or fifty percent (50%) of damage or deterioration of the non-supporting enclosing or outside walls or covering.
- 3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.

No testimony of evidence proves any of these apply. In fact, if one would observe just the photos from Scotland CE marked M1-M24, you can roughly calculate that the building has less than fifteen (15%) of exposed area that the brick façade needs to be put back on, far from the required fifty percent (50%).

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) calls for a standard of method and requirements that expert testimony be of strict use of scientific methods and procedures of the general Science community or area of expertise. The International Code Council has formulas used for calculating Dead Loads, Live Loads, etc. that is the standard for Structural Engineering and is accepted by the experts in the field. These practices can be found at www.thestructuralworld.com. Boice was unable to provide measurements and those are needed for the calculations. His testimony, at best, is equal to that of a novice builder. He may be qualified, however, in this case he did not follow the rule of law or the criteria for his professional opinion to be of more value than any lay person. Boice testifies his first duty is to protect life, and it would not be economically feasible to fix these buildings and would cost 2-\$300,000. He states it "would be much more economical to take it down and build something else." (T Pg.12 L7-14). Melanie's original bid obtained orally, submitted in writing February 5, 2024, was for a fraction of that amount (less than \$7,000). At the time of the oral bid and being advised from Scotland finance officer, Tanya Bult, it would not need to be in writing, the repairs would have been less than legal fees and expenditures the City has put out for this action. Boice states the building is worth \$20,000 but this is out of his area of expertise. He is not a real estate market expert. Mike Stevens "Rests" for the

Plaintiff/Appellee. (T Pg. 27 L20). Judge then guides Counsel MS to not rest but informs him he needs a declaration of Nuisance to order Demolition, specifically stating "you'd need to put on evidence of a nuisance.". (T Pg. 27 L21-25). Her reason was to "assure both sides will get the necessary time." (T Pg. 28 L9-11). The assurance of both sides getting the necessary time was not much of a concern when considering the Motion for Continuance due to recently acquiring representation. GF states the building "Scares me to death" (Pg.37 L2). This is part of the Theatrics that take place whenever Scotland or its agents speak of 610-620 Main Street as are the huge barricades put around the building two (2) years prior to bricks falling. GF that the bricks caused a gas leak and had to have the gas service removed. He is merely saying when asked about page 3 of evidence, "That's the area where they said earlier that the gas either had been hit by the brick-there was a slight leak to it and the gas company since retired the gas service to the building." (T pg.39 L12-15). He is not providing testimony that he observed a gas leak or was party to this action but simply is quoting MS's opening statements to the Court. Boice had testified of the gas leak but has only been to the property a few times and not in the week of question. SCD1-01 through SCD1-05, of SR filed January 17, 2025, for SC30829, are proof of no gas service being at this property. Northwestern Utility Company sent the referenced email and bills that indicate there was only electric service at this property at the time of the alleged Gas Leak. Also, SR contains A of Melanie that states her being party to the conversations with NW the day after the trial, July 31, 2024. When asked why NW did not notify the property owner or account holder of the dangerous gas leak, the

representative replied that there "was no gas leak". Also, party to other recorded conversations with NW it was said that on July 29, 2024, the day before trial, the City Attorney had called to have the meter removed from the service address at 620 Main. When in cross examination by MS the witness, Melanie, asked what day the supposed gas leak occurred and testified she had been there almost every day the week before. MS said it must've been a day Melanie wasn't there. No date of incident was presented as evidence to the Court. As per A in Support of Motion to Supplement Record, of Melanie, there were several days in a row, including days just prior to Court that she used the back entrance to the 620 building and did not notice the gas meter to be damaged or smell gas. She also stated in A that no additional bricks fell after the cleanup of June 12, 2024. This tactic "gas leak plan" implemented the day before trial is indicative the Plaintiff was assuring that it would have an emergency reason to proceed. The potential nuisances having been abated by August 1, 2024, provided for no emergency. Melanie testified that the bricks coming out of the building on the East side are only about knee high and therefore not dangerous. Melanie testified that the back of the building is dangerous and that is why she has been trying to get permission to work on it without threat of arrest. Stating it "should be paneled immediately" (T Pg.98 L25). Melanie stated there is no indication any settling of the walls or floors has occurred since the first favorable inspection, DB22. That Boice educated her on what would be happening when the foundation settles. The testimony of Melanie is consistent with the Reports. The urgency for permission to repair the building to keep water out of the envelope is what Felts requested of the

Court prior to Judge's ruling. A copy of the Estimate from Melanie's Professional Contractor, Suess' Construction, was only \$6,819.00 prior to the additional damage to façade caused by delays of permits and threats. The additional estimate of \$6,800 is a total of \$13,619.00. MS asked Melanie if she had \$200,000 right there in court and if she thinks that \$25,000 would complete the project. There were no specifics as to what "project". When answering she could have been answering about her making apartments in the upper portion of 620 main. It was testified that Melanie spoke with Mike Albertson, a Structural Engineer about a permit and explained who the Code Enforcer was and what he was doing. Mr. Albertson told Melanie that he would only be wasting her money if he came to do the report because he'd seen this before where they often times single someone out. He said there had to be an attorney hired first to set the ground rules "That those permits are answered." Because, until then, they wont "pay attention to another Engineer's evaluation." Attorney Beau Barrett was hired that day. (T Pg. 88 L19-25, Pg. 89 L1-9). The Judge erred in the weighing of facts proffered by the witnesses. Being evident the building was not allowed to speak for itself the Order Granting the Motion to Demolish should be overturned.

II. Whether the Trial Court erred in deeming 610 and 620 West Main Street Scotland SD constituted a nuisance.

All matters that were of concern for public safety had been abated by the time of trial. SR, SCD2-01 and SCD2-02 is a presentation given to the Scotland City Council at the August 12, 2024, meeting. They show the nuisance to be mitigated. The only hazards are the due to the permit delays where water can

get into the envelope and that is on the North End of both buildings. Scotland witnesses testified there are barricades around the area to protect the public. The current photos in SR SCD9-01 and SCD9-02 show there is no public safety hazard and no potential nuisance. The declaration of Nuisance should be overturned.

III. Whether the Trial Court erred in ordering the demolition of a Nationally Registered Historic Contributing property rather than a plan to abate a nuisance.

The Secretary of Interior provides Standards for the South Dakota Historical Preservation Office, SHPO. The main goal of this Gov't entity is to preserve our Nations Historical Landmarks. SR, SCD3-SCD6 are email correspondence to and from SHPO agents. They indicate a review for changes would have to take place according to SDCL 1-19A-11.1. This would include the need for the city to file a review when Melanie requested permits. SCD5 indicates that Scotland failed to do so for the improvement projects, but did however submit a Demolition project. This is in line with the fact they never had intentions of allowing the property owner to use this property. SCD7-01 through SCD7-07 is a letter and the Review for this statute submitted by MS. The document contains numerous fabrications. The letter SCD7-01 is support of the intent of Scotland to demolish only. In paragraphs 2 and 4 Mike Stevens implies the buildings have been abandoned for over thirty (30) years. This letter is stamped received by SHPO August 10, 2023, long before the first bricks fell May 30th of 2024. Section 5, SCD7-03 claims the building is abandoned and there are no businesses being made or potential economic value. This is false. The businesses and their recent years of operation are public knowledge. 620 Main

Street, Scotland SD, was an operating business, Fitzgerald Chiropractic, until about 2014 and has been occupied by Melanie since purchased. 610 Main Street, Scotland SD, was an operating Dental office, Doctor Curtis Johnson, until purchased by Melanie. Both buildings are currently being used by the Appellant and plans for businesses have been submitted. SR potential exhibits SCD8-01 through SCD8-04 clearly show the buildings 610 and 620 Main Street are not abandoned and that counsel MS in lower left photo of SCD8-01 is well aware of this as would Geoffrey Fillingsness and Boice having testified they were in the building 3 times and once, respectively. The Court erred in Granting a Demolition rather than Ordering the City of Scotland to be amicable with the owner to allow all preservation of History immediately while possible. The Order Granting Demolition of a *Contributing Property* of the Scotland Main Street Historic District should be overturned.

IV. Whether the Trial Court erred in evidence used for ruling(s).

The gas leak and person mowing the lawn mentioned by MS in the argument against the Continuation and the use of this information for rulings to deny the Continuance and the final ruling to Grant Demolition were greatly affected by this information that was not proven during the trial. This is proven in arguments I through III above. For this reason, all rulings of July 30, 2024, should be overturned.

V. Whether Defendant and Appellant was deprived of their right to due process given the status of legal representation.

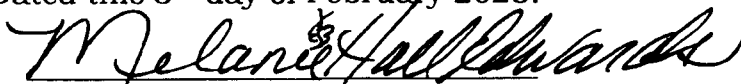
As a Matter of Record, and supported by SR A Attorney Beau Barrett was hired on June 11, 2024 and failed to file appearance until July 16, 2024. His

refusal to withdraw left the Appellant with no legal way to file a motion for continuance either on her own or by new counsel. New counsel was substituted the morning of the trial. Melanie was not able to brief her new counsel and therefore was denied the right to adequate attorney and due process. It is requested the court act accordingly.

CONCLUSION

The Circuit Court Erred in the Granting the Plaintiff's June 10, 2024, Motion. The motion should be overturned. The trial court erred in deeming the property 610 & 620 a nuisance and this ruling should be overturned. The trial court erred in ordering the demolition of a Nationally Registered Historic Contributing Property rather than a plan to abate the nuisance. The Court should Order the cooperation of the City of Scotland and assign a mediator if possible. The trial court considered evidence that was not proven for rulings in the July 30, 2024, trial on all motions. All motions granted should be overturned by the South Dakota Supreme Court. The Defendant/Appellant was deprived of the right to due process. The Court should act accordingly. The Appellant respectfully requests the above declarations to be considered by the Court. It is necessary to consider the Science.

Dated this 3rd day of February 2025.

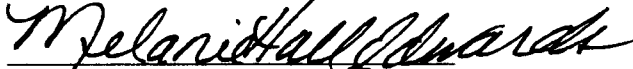
A handwritten signature in black ink, appearing to read 'Melanie Hall-Edwards', written over a horizontal line.

Melanie Hall-Edwards
Appellant and Defendant

CERTIFICATE OF COMPLIANCE

1. I certify that that the Appellant's Brief is within the limitations provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12pt type. Appellant's Brief contains 5,643 words.
2. I certify that the word processing software is Microsoft Word App For Microsoft 365 (Version 2204 and 2412) 64 bit.


Dated this 3rd day of February 2025.


Melanie Hall-Edwards
Appellant and Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of February 2025 a true and correct copy of Appellant's Brief in appeal no. 30829, *Melanie Hall-Edwards v. The City of Scotland, A South Dakota Municipality* was served via electronic mail upon Michael D. Stevens, Attorney for the Appellee and Plaintiff, at attymike07@gmail.com.

Dated this 3rd day of February 2025.


Melanie Hall-Edwards
Appellant and Defendant

APPENDIX

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STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
	:SS	
COUNTY OF BON HOMME)	FIRST JUDICIAL CIRCUIT
<hr/>		
CITY OF SCOTLAND,)	
)	
Plaintiff,)	04CIV22-000046
)	
v.)	
)	ORDER GRANTING
MELANIE HALL-EDWARDS,)	PLAINTIFF'S MOTION FOR
)	DEMOLITION
Defendant.)	
)	
<hr/>		

THIS MATTER, came before this Court on the 30th day of July, 2024 at 1:00 PM in the courtroom of the Bon Homme County Courthouse, Tyndall, South Dakota, before the Honorable Cheryle Gering presiding, pursuant to Plaintiff's Motion dated June 10, 2024. Plaintiff, City of Scotland, was represented by attorney Michael D. Stevens of Blackburn & Stevens Prof. LLC, Yankton, South Dakota. Defendant Melanie Hall-Edwards personally appeared and was represented by her attorney, Austin J. Felts of Frieberg, Nelson & Ask LLP, Beresford, South Dakota.

This Court reviewed the (a) affidavits and photographs on file; (b) the three (3) structural engineer reports of structural engineer Duane Boice; (c) exhibits submitted by the parties; (d) the expert testimony of structural engineer Duane Boice; (e) the expert testimony of engineer and inspector Geoffrey Fillingsness; (f) the testimony of the Defendant Melanie Hall-Edwards; and (g) the oral argument from the parties. The Defendant did not offer any expert testimony.

The Court made its oral findings on July 30, 2024, which are hereby incorporated by reference.

~~THE COURT FINDS THAT THE DEFENDANT'S MOTION FOR DEMOLITION IS GRANTED.~~
~~THE COURT FINDS THAT THE DEFENDANT'S MOTION FOR DEMOLITION IS GRANTED.~~
~~THE COURT FINDS THAT THE DEFENDANT'S MOTION FOR DEMOLITION IS GRANTED.~~

(amended by Judge Gering)

Filed on: 08/07/2024 Bon Homme County, South Dakota 04CIV22-000046

(amended by Judge Gering)

~~alleged that the condition of the Defendant's property violated the City of Scotland's Building~~
~~XXXXXX~~
 The Court found (amended by Judge Gering)

~~XXXX~~ that the condition of the buildings constituted a "dangerous building" as defined by the

City of Scotland building Code; that the condition of the buildings constituted a nuisance; ~~XXXX~~
 (amended by Judge Gering) (amended by Judge Gering)

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ that the condition of the buildings
 that the nuisance (amended by Judge Gering)

constituted a safety hazard; and ~~that~~ needed to be immediately abated. Further, that the

Defendant's property constituted a nuisance pursuant to SDCL § 21-10-1(1). The Court further

found

~~XXXX~~ that the buildings are dangerous to the public ~~as defined by the City of Scotland Building~~
 (amended by Judge Gering) (amended by Judge Gering)

~~XXXX~~ The Court finds that the Plaintiff has met its burden of proof. With good cause appearing
 as stated in the Court's oral ruling which is incorporated by reference, and with no party indicating to the Court
 that detailed written findings and conclusions were being requested by either party (amended by Judge Gering)
 therefore, IT IS HEREBY:

ORDERED that Plaintiff shall be granted immediate unfettered access to the buildings at
 610 West Main Street and 620 West Main Street, Scotland, South Dakota for the purpose of
 conducting an interior inspection for asbestos and any other harmful material; it is further

ORDERED that Plaintiff, upon the completion of the asbestos inspection, shall be
 authorized to facilitate the demolition of the buildings located at 610 West Main Street and 620
 West Main Street, Scotland, South Dakota; it is further

ORDERED that Defendant shall be required to reimburse the City of Scotland, South
 Dakota, for their expense(s) incurred in abating the above violations, as allowed by law, which
 includes, but is not limited to including attorney fees, tax, and costs and disbursements; it is
 if authorized by the Court (amended by Judge Gering)
 further

ORDERED that Plaintiff City of Scotland shall not submit any expenses to Defendant for
 repayment without an additional Order of this Court which approves the City's submission for
 reimbursement from the Defendant. Approval of submitted expenses to this Court shall not be
 requisite to facilitate the demolition of the buildings; it is further

ORDERED that the Court does adopt its oral findings of fact and conclusions of law as
stated in open court.

BY THE COURT:

8/7/2024 4:21:32 PM


HON. CHERYL GERING
Presiding Circuit Judge

Attest:
Young, Heather
Clerk/Deputy



SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

APPEAL NO. 30829

CITY OF SCOTLND,

Plaintiff and Appellee,

Vs.

MELANIE L. HALL-EDWARDS,

Defendant and Appellant.

Appeal from the Circuit Court
First Judicial Circuit
Bon Homme County, South Dakota

HONORABLE CHERYLE GERING
Circuit Court Judge

BRIEF FOR APPELLEE

Notice of Appeal Filed on September 5, 2024

APPELLANT REPRESENTED PRO SE:
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Kaylor, South Dakota 57354

ATTORNEY FOR APPELLEE:
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Michael D. Stevens
100 West 4th Street
Yankton, South Dakota 57078

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PRELIMINARY STATEMENT

Throughout this Brief, Plaintiff/Appellee “City of Scotland” will be referred to as “Scotland.” Defendant/Appellant “Melanie Hall-Edwards” will be referred to as “Hall-Edwards.”

References to the settled record will be designated by the letter “SR” along with the appropriate page. References to the July 30, 2024 Motion Hearing will be designated by the letters “TR” followed by the page and line number. References to the September 6, 2024 Motion Hearing will be designated by the letters “WTR” followed by the page and line number. References to the Appendix shall will be designated “A” followed by the page number.

JURISDICTIONAL STATEMENT

Scotland filed a motion to demolish the buildings owned by Hall-Edwards on June 13, 2024. (SR 90). A Motion Hearing was held on July 30, 2024 and the Honorable Cheryle Gering, Circuit Court Judge, granted Scotland’s motion to demolish. (SR 145). The trial court signed and filed the order to demolish on August 7, 2024. (SR 145). On August 12, 2024 Notice of Entry of Order, granting Scotland’s motion for demolition, was filed with the Bon Homme County Clerk of Courts. (SR148).

On the 9th day of September, 2024, Hall-Edwards filed her Notice of Appeal. (SR160).

Hall-Edwards did not file any objections nor submit any alternative findings of fact or conclusions of law to the trial court’s oral findings of the July 30, 2024 hearing which were incorporated in the trial court’s Order Granting Plaintiff’s Motion For Demolition. (SR 145).

LEGAL ISSUES

- ISSUE I: The Trial Court did not error in granting the Plaintiff's June 13, 2024 Motion.
- ISSUE II: The Trial Court did not error in deeming 610 and 620 West Main Street, Scotland, South Dakota a nuisance.
- ISSUE III: The Trial Court did not error in ordering demolition of a Nationally Registered Historical District contributed property rather than a plan to abate a nuisance.
- ISSUE IV: The Trial Court did not error in evidence used for rulings.
- ISSUE V: The Defendant and Appellant was not deprived of her right to due process given the status of legal representation.

STATEMENT OF THE CASE

Scotland sought an order to demolish the buildings owned by Hall-Edwards located at 610 and 620 West Main Street, Scotland, South Dakota on the basis that the buildings are (a) a health and safety danger to the public; (b) a nuisance as defined by SDCL 21-10-1(1); and (c) a nuisance as defined by Scotland's building codes, specifically title VIII, sections 8.0304, 8.0315 and 8.0316.

The legal proceedings began on July 8, 2022. Scotland filed an "Affidavit In Support of an Administrative Inspection Warrant", pursuant to SDCL 34-43-2, requesting authority to do a structural inspection of the property owned by Hall-Edwards. (SR 1). On July 11, 2022 Judge Gering issued the Inspection Warrant. (SR 17). Hall-Edwards was not able to be located timely, therefore Scotland reissued another Affidavit In Support of an Administrative Inspection Warrant (SR 20) and the trial court granted its request and issued a second Inspection Warrant. (SR 24).

After the structural inspection was completed, on November 3, 2023 Scotland filed its Summons (SR 26) and Complaint (SR27) and attached a copy of the (a) structural inspection dated July 28, 2022 and marked as Exhibit A; (b) a letter from Scotland's attorney informing Hall-Edwards that emergency action was required to abate a nuisance, marked as Exhibit B; (c) a supplemental inspection report dated August 22, 2023 and marked as Exhibit C; and (d) a flash drive with photographs showing the condition and deterioration of the buildings.

Attempts to serve Hall-Edwards were unsuccessful as she was trying to avoid service of Scotland's Summons and Complaint. (SR 26 and 27). Hall-Edwards' son would not disclose the location of his mother. (SR 38). After several attempts to obtain service on Hall-Edwards, a motion was filed by Scotland on November 30, 2023 to allow Hall -Edwards to be served by publication pursuant to SDCL 15-9-7. (SR55). An affidavit supporting the motion was filed outlining all the attempts that were made to obtain service on Hall-Edwards by Scotland with supporting documentation (SR 38). The trial court authorized service by publication. (SR 56). The Summons was published in the Scotland Journal with the last publication occurring on January 3, 2024. (SR60).

On January 16, 2024 Hall-Edwards, acting pro se, filed duplicate documents entitled "Answer to Complaint & Request" (SR 62) and (SR 67) marked confidential which includes Exhibit C claiming that she wanted protection from the Bon Homme County Sheriff's Office and the local law enforcement of Scotland.

Neither document filed by Hall-Edwards, entitled "Answer to Complaint" (SR 62 and SR 67) denied any of the allegations contained in Scotland's Complaint. (SR27).

On June 13, 2024 Scotland filed its motion requesting authority to demolish the buildings located at 610 and 620 West Main Street, Scotland, South Dakota and also requesting authority to inspect for asbestos and for reimbursement of its costs. (SR 90). In support of said motion, Scotland filed (a) the affidavit of Geoffrey Fillingsness, the building code inspector and (b) the affidavit of structural engineer Duane Boice, who had inspected the buildings three (3) times. (SR 92). Attached to the affidavit of Dune Boice was a thumb drive with the most recent photographs. (SR 92). In addition, Scotland filed a motion for another structural and asbestos inspection because Hall-Edwards refused to give her permission to do an inspection for asbestos and other potential harmful material. (SR 99).

On July 30, 2024 the trial court granted Scotland's motion to (a) demolish the Hall-Edwards buildings; (b) to grant Scotland unfettered access to the buildings to conduct an interior inspection for asbestos and other potential hazardous material; and (c) the trial court ordered Hall-Edwards to reimburse Scotland for its expenses incurred, as approved by the trial court. The trial court specifically found that the Hall-Edwards' buildings (a) constituted a nuisance based upon SDCL 21-10-1(1) and (b) that the buildings were dangerous buildings and a safety hazard that needed to be immediately abated, as they violated the Scotland building code. (SR 145).

Hall-Edwards now represents herself in this appeal.

In the brief filed by Hall-Edwards, she includes a portion entitled "Background of Case." Scotland denies each allegation made in this part of Hall-Edwards brief.

STATEMENT OF FACTS

Hall-Edwards did not deny any of the allegations in the Complaint filed by Scotland. (SR 27) Nor did she file any objections or submit any alternative findings of fact or conclusions of law to the trial court's oral findings of the July 30, 2024, hearing which were incorporated in the trial court's Order Granting Plaintiff's Motion For Demolition. (SR 145).

Geoffrey Fillingsness, hereinafter referred to as "Fillingsness", has been in the construction, development, and design since 1960. (TR 29:13-14). He is a renovation specialist and has done building architectural work. (TR29:16-19). He has a patent from the United States Patent Office on a design for a circulator escalator which has been built in Japan and China. (TR 29:23-24). He has built shopping centers in 27 different states, including the Mall of America and other large projects in New York City; Baltimore and Dallas. (TR29:21-25).

Fillingsness is the building code inspector for Scotland. He has been in the building code side of construction for twenty (20) years. (TR 30:3-4). He is the past president of the South Dakota Building Code Officials organization and vice president of the South Dakota Building Inspection organization. (TR 30:4-7). He has also been an instructor for the international building association and the national conventions of the American Association of Code Officials. (TR30:10-14). He is currently working for different communities in South Dakota enforcing their building codes. (TR 31:22-24).

South Dakota and Scotland have both adopted the building code as exists by the American Association of Code Officials which states that a violation of the codes would constitute a nuisance. (TR 31:14-17). Scotland has a building code as well.

In 2021 (TR 33:8-10) Fillingsness was asked by “several city councilmen to take a look” at the Hall-Edwards buildings because of their concern “about the safety of the buildings and bricks that had been falling loose and grouting that was missing.” (TR 32:19-22). At their request, Fillingsness personally did numerous external visual inspections of the abandoned and boarded up buildings located at 610 and 620 West Main Street, Scotland, South Dakota owned by Hall-Edwards. Throughout the proceedings, Fillingsness has constantly monitored the condition of the buildings as they continued to deteriorate. (TR 33:2-7). Fillingsness initially observed the following, to wit:

1. The brick façade had bricks falling out and there were open spots on the east wall of the building. (TR 33:16-19);
2. Bricks were coming loose and he observed holes in the brick and the deterioration of the brick. (TR 33: 22-23);
3. On the northwest building there was a separation of the west wall and the north wall to the point you could “put your hand inside of the wall corner.” The wood was rotted away and nonexistent. (TR 33:24-34:02);
4. Bricks had fallen on the public sidewalk and on the south side and on the north side-east side of the buildings (TR 34:7-10) which he considered a “safety hazard”. (TR 34:11-13);
5. Windows were broken or missing (TR 34:24) or the glass was gone. (TR 35:01); and
6. The side walk had settled and the foundation had started to drop right on the east side where the entry door is located. (TR 35:02-04).

As a result of his observations, Fillingsness hired Duane Boice, hereinafter referred to as “Boice”, to do a structural inspection. (TR 32:24-33:1). Boice is a structural engineer. (TR 9:7). He received his bachelor’s degree in civil engineering in 1970 and his master’s degree, with a structural emphasis, from South Dakota State University in 1971. (TR 9:10-12). He has been in the engineering business since 1988 when he incorporated Engineering & Technical Services. His business has at least two (2) engineers always employed. (TR 9:19-21).

Boice testified that he personally inspected the properties located at 610 and 620 West Main Street, Scotland, South Dakota, which are owned by Hall-Edwards, on three separate occasions. (TR10:7-16). His first inspection occurred in July, 2022. (TR 10:18-19). After his first inspection, he informed Hall-Edwards that she needed to make repairs to her buildings or the buildings would “continue to deteriorate and something’s got to be done.” (TR 11:10-14). Hall-Edwards agreed to make the repairs but Boice testified at the hearing that she had not made any repairs or taken any action to prevent further deterioration of her buildings and that now there were additional problems. (TR 11:13-15). Boice testified that the last time he inspected the buildings, the buildings had deteriorated even more and that “a whole section of the wall, the brick, had fallen off.” (TR 11:16-17).

Boice further testified that:

1. The superstructure of the buildings was very soft and had rotted. (TR 11:24-12:1);
2. A lot of the sheathing was rotted. (TR 12:1-2);

3. The wall, the studs, the siding had been exposed to the moisture that came through the bricks. (TR 14:10-13);
4. The moisture has rotted the siding and the studs. (TR 14:12-13). The exterior walls are decaying. (TR 15:10-12);
5. With a heavy snow load, the load could easily exceed the capacity of those rotted studs and the buildings could collapse. (TR 14:13-15);
6. There are lots of birds coming in and out of the buildings. (TR 14:23-24);
7. The exterior of the building is decaying. (TR 15:10-12);
8. The foundation is settling and has been getting worse. (TR 16:1-7);
9. Bricks are dropping off the building (TR 17:18-19) due to rusty and rotted off nails causing the bricks to fall. (TR 18:17-23). There is also a shifting of the bricks on the building which was described as "very dangerous." (TR 18:8-9);
10. Rotted wood, studs and siding that "crumbles in your hand." (TR 18:1-4);
11. Large portion of the bricks fell away from the building hitting the gas meter. (TR 18:10-11); and
12. Gaps in the bricks that are widening and allowing moisture to come into the buildings. (TR 20:14-17).

Boice testified that in his expert opinion, the buildings were a hazard for life, safety of any occupant, any contractor, or anyone nearby. (TR 12:22-24). He further testified that the building has "been allowed to deteriorate to the point that it is a life and safety hazard now." (TR 13:12-13). He also testified that it would take anywhere from \$200,000.00 or more to fix the buildings and the buildings are only worth about \$20,000.00. (TR 13:8-10). When asked if Hall-Edwards had \$200,000.00, she admitted

that she does not have that sum of money. (TR 119:9-11). She testified that she was planning on applying for a \$25,000.00 grant. (TR 97:20-25). It was also her testimony that it would only cost \$6,819.33 to repair the building. (TR 120:24). She had no expert testimony to support her opinion.

Fillingsness testified that he has been constantly monitoring the buildings owned by Hall-Edwards since 2021. (TR 33:2-7; 35:17-25). He has seen a constant and noticeable deterioration of the buildings over the past three (3) years. He testified that:

1. Since 2021, the separation of the two (2) walls has increased in size from 6-8 inches wide and up to 8-10 feet to now it is between 12-15 inches wide and goes “almost to the very top of the building two (2) stories now...” (TR 35:17-25);
2. The foundation has sunk more. (TR 36:02);
3. The sidewalk has sunk more. (TR 36:1-2);
4. More bricks continue to fall including those along the public sidewalk. (TR 36: 03);
5. A large portion of the west building had a “landslide” of bricks where it fell and there is a continuous deterioration every day. (TR 36:04-06). An individual mowing the lawn next to the building almost got hit by the falling bricks and Hall-Edwards took no remedial action to protect the safety of the citizens of Scotland. (TR 118:18-119:01);
6. Bricks fell right above the gas meter and it was discovered that there was a gas leak which required the gas to be turned off at the building so as not to cause an explosion, fire, or other ramification. (TR 39:12-15);

7. The exposed wood is rotten and it is like saw dust. (TR 41:17);
8. The parapet is leaning severely and Fillingsness is concerned that it will tip over, and when it does, it will go on top of the roof but hopefully it will not “kick out onto” the public street and hurt someone. (TR 43:13-19);
9. There were several broken out windows. (TR 43:20-21);
10. The openings in the side of the building allow animals of all size to enter such as a small dog; rabbit; raccoon; and birds which cause a health concern. (TR 44:25-45:08).

Based upon his observations, Fillingsness testified that in his expert opinion, the condition of the buildings owned by Hall-Edwards (a) constituted a “dangerous building” in violation of Section 8.0316 of the Scotland Building Code. (TR 35:07-14); (b) were a “health hazard.” (TR 36:25-37:02); (c) constituted a public safety problem due to the falling bricks. (TR 42:18-43:01); (d) violated the Scotland building code. All these violations constitute a nuisance as defined by the Scotland building code. (TR 46:15-20).

Hall-Edwards under cross-examination admitted that the bricks falling from her building constituted a “safety concern.” (TR 98:23-99:08).

From 2021 through the time of the hearing in this matter, Hall-Edwards never hired any expert to inspect the buildings. The only testimony that she submitted was her own. When asked about her educational background she stated that “I have an education in life and common sense.” (TR 108:16). Contrary to the testimony of Boice and Fillingsness, she testified that her buildings were in “good shape.” (TR 108:20-23). Even though she admitted that she received a copy of each one of the inspection reports by

Boice, outlining the safety and health concerns that she needed to immediately address, she never took any meaningful remedial actions. (TR 100:12-14).

ARGUMENT

ISSUE I: The Trial Court did not error in granting Plaintiff's June 10, 2024 Motion.

ISSUE II: The Trial Court did not error in finding that the buildings located at 610 and 620 West Main Street, Scotland, South Dakota constituted a nuisance.

NOTE: The above two issues by Hall-Edwards are basically the same. Instead of repeating the same facts and applicable law for each issue, Counsel will address these issues together.

The trial court's findings were not clearly erroneous. The trial court properly concluded that Scotland had met its burden of proof in showing that 610 and 620 West Main Street, Scotland, South Dakota, were a nuisance according to SDCL 21-10-1(1). The buildings were also a nuisance and violated the Scotland building code, Section 8.0316 which defines dangerous buildings as a nuisance when it is a safety and health hazard.

This Court has repeatedly given deference to the trial court's findings of fact. The trial court's findings of fact are reviewed under the clearly erroneous standard of review. The court is not to decide factual issues de novo. Fin-Ag, Inc., 2007 S.D. 105, 740 N.W.2d 857, 862-863, at paragraph 19.

We review the circuit court's findings of fact under the clearly erroneous standard. Under this standard, we will on reverse when we "are left with a definite and firm conviction that a mistake has been made" after a thorough review of the evidence....In applying the clearly erroneous standard, our function is not to decide factual issues de novo, but whether the entire evidence we are left with a definite and firm conviction that a mistake has been committed. This Court is not free to disturb the lower court's findings unless it is satisfied that they are contrary

to a clear preponderance of the evidence. Doubts about whether the evidence supports the court's findings of fact are to be resolved in favor of the successful party's "version of the evidence and of all inferences fairly deductible therefrom which are favorable to the court's action." In re Estate of Smid, 2008 S.D. 82, ¶11, 756 N.W.2d 1.; Matter of Estate of Eichstadt, 983 N.W.2d 572, 581 2022 SD 78.

This Court has held in McCollam vs. Cahill, 2009 S.D. 34, 766 N.W. 2d 171, this court held:

The credibility of the witnesses, the weight to be accorded their testimony, and the weight of the evidence must be determined by the [circuit] court and we give due regard to the [circuit] court's opportunity to observe the witnesses and the evidence.'" In re Estate of Pringle, 2008 S.D. 38, ¶18, 751 N.W.2d 277, 284 (quoting In re Estate of Dokken, 2000 S.D. 9, ¶10, 604 N.W.2d 487, 490-91).

The trial court specifically found that the buildings owned by Hall-Edwards constituted a nuisance. SDCL 21-10-1(1) states that "a nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either: (1) annoys, injures, or endangers the comfort, repose, health, or safety of others."

Section 8.0304 of the Scotland building code, defines what a nuisance is. It simply provides that any building or premises that is not maintained or kept in a manner which is at variance with and inferior to the level of maintenance of surrounding property is a nuisance. The testimony of Boice and Fillingsness clearly supports the trial court's findings that the Hall-Edwards buildings violate subsections 1, 2, 8 and 9, of the Scotland building code, set forth below. Those violations constitute a nuisance according to the Scotland building code.

(1) buildings which are abandoned, boarded up, partially destroyed, or partially constructed and uncompleted subsequent to the expiration of building permit;

(2) broken windows, doors, attic vents, and underfloor vents;

(8) building exteriors, walls, fences, driveways or walkways which are defective or deteriorated or in disrepair or defaced; and

(9) any like and similar condition or conditions.

Section 8.0316 of the Scotland Municipal Building Code, defines what a dangerous building is and thus a nuisance. The testimony of Boice and Fillingsness supports the trial court's finding that the Hall-Edwards buildings violate subsections 4, 5, 8, 9 and 10, set forth below, and thus constitute a dangerous building according to the Scotland building code.

(4) Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City of Scotland.

(5) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.

(8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.

(9) Those which because of condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of the City of Scotland.

(10) Those buildings existing in violation of any provision of the Building Code of this city, or any provision of the fire prevention code or other ordinances of this city.

Hall-Edwards did not have any expert testimony to contradict the expert testimony of Boice or Fillingsness. Boice testified that in his expert opinion that the buildings were a hazard for life, safety of any occupant, any contractor, or anyone nearby. (TR 12:22-24). He further testified that the buildings have "been allowed to deteriorate to the point that it is a life and safety hazard now." (TR 13:12-13). Fillingsness concluded

that the condition of the buildings constituted a “dangerous building” in violation of Section 8.0316 of the Scotland Building Code. (TR 35:07-14) and thus a nuisance. (TR 46:15-20). He also testified that he considered the buildings owned to be a “health hazard.” (TR 36:25-37:01). Finally, he testified that the falling bricks constituted a safety problem. (TR 42:18-43:01). Even Hall-Edwards, under cross-examination, admitted that the bricks falling from her building constituted a “safety concern.” (TR 98:23-99:08). Yet she did nothing to address these safety and health hazards which could occur with bricks falling onto the public sidewalks; children playing in an abandoned building; animals entering the building; and the deteriorating condition of the buildings.

The trial court found that the testimony of Hall-Edwards was not credible. (TR 148:17). The trial court noted that Hall-Edwards “instead of answering a question directly or responding directly to a request and Ms. Hall-Edwards often either avoids answering the question directly, answers the question with more questions, and does not show what the Court would find to be a good-faith effort to make changes when the changes could have been made when the issues originally were brought up in this case.” (TR 149:6-12).

ISSUE III: The Trial Court did not error in ordering demolition of a nationally registered historical district contributed property rather than a plan to abate a nuisance.

In Weber vs. Weber, 999 N.W. 2d 230, at 236 (2023 S.D. 64), this Court stated that “a party’s failure to argue an issue to the circuit court waives their ability to argue it on appeal.

No testimony was presented, no argument was made, and no authority was presented by Hall-Edwards to support that a property listed on the historical registry was exempt from these demolition proceedings. Further, the findings of the trial court were

not objected to by Hall-Edwards nor were alternative findings proposed by Hall-Edwards either. The trial court's findings were not clearly erroneous.

ISSUE IV: The Trial Court did not error in evidence used for rulings.

In Weber vs. Weber, 999 N.W. 2d 230, at 236 (2023 S.D. 64), this Court stated that:

A party's failure to argue an issue to the circuit court waives their ability to argue it on appeal. It is well established that we will not review a matter on appeal unless proper objection was made before the circuit court. An objection must be sufficiently specific to put the circuit court on notice of the alleged error, so it has the opportunity to correct. Matter of Estate of Eichstadt, 983 NW. 2d 572, at 581 (2022 S.D. 78)

Counsel for Hall-Edwards did not object to any evidence that was presented by Scotland and has thus waived this matter on appeal. Thus Hall-Edwards has conceded that the findings of the trial court were not clearly erroneous.

ISSUE V: The Appellant was not deprived of her right to due process given the status of her legal representation.

The granting or the refusal of a request for a continuance is within the sound discretion.

The granting or refusal of a continuance is within the sound discretion of the circuit court, and its rulings will not be reversed absent a clear abuse of discretion. The term "abuse of discretion" refers to a discretion exercised to an end or purpose not justified by, and clearly against, reasons and evidence." Meadowland Apts. v. Schumacher, 813 N.W.2d 618 (2012 S.D. 30) (quoting Gross v. Gross, 335 N.W.2d 4, 7 (S.D. 1984).

In deciding whether or not to grant a continuance, a trial court must consider: (1) whether the delay resulting from the continuance will be prejudicial to the opposing party; (2) whether the continuance motion was motivated by procrastination, bad planning, dilatory tactics or bad faith on the part of the moving party or his counsel; (3) the prejudice caused to the moving party by the trial court's refusal to grant the

continuance; and, (4) whether there have been any prior continuances or delays. Evens v. Thompson, 485 N.W.2d 591, 594 (SD 1992).

The trial court did not deprive Hall-Edwards of her right to due process when it denied her motion for a continuance because (a) the delay would have been prejudicial to Scotland; and (b) the delay was motivated by procrastination, bad planning, dilatory tactics or bad faith on the part of Hall-Edwards. There were no prior continuances although Hall-Edwards delayed resolving the issues by forcing Scotland to obtain service through publication. Any prejudice that Hall-Edwards would claim are all self-imposed.

1. The delay in resulting from a continuance would have been prejudicial to Scotland.

The request for a continuance was prejudicial to Scotland due to the safety and health concerns caused by Hall-Edwards dangerous buildings. This matter has been pending for almost three (3) years (TR 35:15) and the citizens of Scotland would be prejudiced by any further delays due to the safety and health concerns that have existed due to the health and safety concerns that the dangerous buildings owned by Hall-Edwards exist. Falling bricks have almost already struck one individual mowing nearby (TR 118:18-119:01); bricks falling on the public sidewalk (TR 36:03); animals going in and out of the building (TR 44:25-45:08); broken windows (TR 43:20-21) and access to the building make it an attractive nuisance for children and others; and there was already a gas leak (TR 39:12-15) that could have caused a fire or explosion. In addition, experts Boice and Fillingsness are very busy individuals and each had traveled from Sioux Falls and Beresford respectfully to testify. In addition, it was going to cost the citizens of Scotland more in attorney fees. Delaying the hearing was going to be an additional cost to

Scotland with little or no probability that Scotland would be or could be reimbursed by Hall-Edwards.

Hall-Edwards knew that her buildings constituted a dangerous safety and health concern months prior to July 22, 2022, when an inspection warrant was requested (SR 1, 17 and 20) and granted due to the safety concerns of the building inspector. Throughout these proceedings, Hall-Edwards had possession of three (3) reports by Duane Boice (TR 100:12-13; SR 105), a structural engineer, who repeatedly advised her that her buildings were collapsing; were dangerous; and were a public safety and health problem. With each report, Hall-Edwards was informed that her buildings were becoming more dangerous. Ultimately, right before trial, a large section of bricks fell and a brick hit a gas meter. Yet, Hall-Edwards never hired a structural engineer to dispute this expert testimony. In fact, no experts testified on her behalf at the hearing. Hall-Edwards was the only person who testified on her behalf.

When a large section of bricks fell and almost struck an individual mowing the lawn (TR 118:18-119:01), Hall-Edwards still chose not to take any real remedial action whatsoever. For more than two (2) years Hall-Edwards chose to do nothing to remedy the situation. As she testified at trial, she did not believe that her buildings were dangerous. (TR 98:11-13). In this regard, Hall-Edwards tried to allege that she was prevented from taking action to remedy the danger and health issues concerning her buildings. She alleged that the Bon Homme Sheriff's Office and the local Scotland law enforcement officer had threatened that she would be "stripped down and taken in if" she was found outside her home in Scotland. (TR 112:4-8). The trial court did not find her testimony "credible." (TR 148:17-19),

2. The continuance motion by Hall-Edwards was motivated by procrastination, bad planning, dilatory tactics and bad faith.

Hall-Edwards has continually done everything that she could to delay addressing her dangerous buildings to the detriment of the citizens of Scotland. Her dilatory tactics and bad faith attempts continued even during the hearing. The trial court specifically made the following findings:

Ms. Hall-Edwards “often, instead of answering a question directly or responding directly to a request and Ms. Hall-Edwards often either avoids answering the question directly, answers the question with more questions, and does not show what the Court would find to be a good-faith effort to make changes when the changes could have been made when the issues originally were brought up in this case.” (TR 149: 5-12).

The Court did, in November of 2023, receive the request from the plaintiff to publish the case, which would be the Summons, because of the inability to personally locate Ms. Hall-Edwards for service, and while I now understand why she may not have been immediately available to do so because she wasn’t in Scotland at the time, the Court believes that this is symptomatic and evidence of her lack of cooperation. (TR 149:13-20).

...the Court does not find, based upon argument of the defense, that there has been good-faith effort on the part of Ms. Hall-Edwards that would give the Court the inclination, even if the law allowed it, to give Ms. Hall-Edwards additional time to do any abatement. (TR 150:1-5)

Since 2021 when this matter began (TR 35:15), Hall-Edwards never hired an expert to dispute any of the three (3) inspection reports that were prepared by Boice. She knew of the hearing date and she had no one to testify on her behalf to contradict the testimony of Boice or Fillingsness. In fact, she was her only witness. Bad planning and procrastination.

Hall-Edwards also procrastinated in hiring an attorney which Scotland asserts was not just bad planning and procrastination, but also the result of bad faith. This would be consistent of the statements of the trial court who stated at the hearing that Hall-Edwards

did “not show what the Court would find to be a good-faith effort to make changes when the changes could have been made when the issues originally were brought up in this case.” (TR149: 5-12).

Scotland’s hearing was scheduled for July 30, 2024. (SR 103). A Notice of Hearing was forwarded to Hall-Edwards on June 10, 2024. (SR 103). On June 11, 2024 Attorney Beau Barrett called Scotland’s city attorney advising him that he was representing Hall-Edwards. Attorney Barrett requested (a) copies on Scotland’s motion; (b) the Affidavit in Support of Administrative an Inspection Warrant; (c) the Affidvit In Support of Plaintiff’s Motion to Demolition and Inspection for Asbestos/harmful Material; (d) Notice of Hearing; and (e) all Engineering and Technical Reports and photographs prepared by Duane Boice the structural engineer. On the same day the requests were made by Attorney Barrett, all of the documents requested by Hall-Ewards Attorney Barrett (June 11, 2024), were sent to him. (SR105).

On July 16, 2024 Attorney Beau Barrett filed his notice of appearance. (SR 106). On July 29, 2024 Attorney Beau Barrett filed a motion to withdraw as Counsel (SR 108) and his affidavit in support of his motion. (SR110). On July 30, 2024, the day scheduled for the hearing, Attorney Beau Barrett and Attorney Austin Felts filed a substitution of counsel and stipulation. (SR114).

The first request for a continuance occurred immediately prior to the commencement of the hearing on July 30, 2024. (TR 3:22-4:9). Attorney Austin Felts testified that Hall-Edwards had contacted him about representing her on the Tuesday, and again on Thursday, immediately prior to the scheduled hearing; i.e. this would have been a week before the scheduled hearing. (TR 3:24-4:01). He further testified that he

officially was hired to represent Hall-Edwards the morning of the hearing. (TR 4:6-7). At the subsequent hearing held on September 6, 2024, Hall-Edwards testified that she had fired Attorney Beau Barrett a week before the hearing. (WTR 3:16).

The sole motivation of Hall-Edwards for the continuance was simply to delay this matter even further and she did not care that this request would subject the citizens of Scotland to more dangerous and health issues. The trial court's decision was based upon undisputed testimony that the buildings were a nuisance and they were dangerous and constituted public safety and health issues that needed to be resolved quickly. (TR 150:6-8).

No written request for a continuance was ever filed in this matter. Hall-Edwards tries to blame the attorneys, however, throughout these proceedings she has done everything she can to delay resolving these safety and health issues caused by her failure to maintain and repair her own buildings. She purposely caused the delay in having her day in court. She can hardly claim that she has been denied due process when she has been running from due process for years. She hid from being served (SR 38); she blamed the Bon Homme County Sheriff's Office, mayor of Scotland, and the City of Scotland law enforcement for threatening to strip her and tie her up (TR 79:12-14); she had to be served by publication because her own family would not disclose of her location to be served (SR 38); she knew Scotland was trying to contact her yet refused to disclose her location; and now she blames her attorneys. These represent nothing more than dilatory actions and procrastination on her part. Her actions threatened the public safety and health due to her dangerous buildings whose bricks are literally falling off the building.

Her refusal to act appropriately is clearly a prejudice to the citizens of Scotland and a real safety and health concern.

Hall-Edwards had the opportunity to prepare for this hearing and to prepare a case for more than three (3) years prior to the hearing. Hall-Edwards chose to discharge her previous attorney, who had been preparing her case prior to the hearing, just a few hours before the hearing was to begin. (TR 4:6-7). The trial court made the correct decision in choosing the safety and health concerns of the public. Hall-Edwards can hardly claim that she has been denied due process.

Finally, Hall-Edwards did not file a written motion as required by SDCL 15-11-6 which provides that:

All applications for continuance must be made, by motion, not less than ten calendar days prior to the day set for commencement of the trial, unless the cause for continuance shall have arisen or come to the knowledge of the party subsequent to that time, in which case the motion shall be made as soon as practicable. All such motions shall be in writing and accompanied by affidavits in support of the motion, which affidavits shall set forth with particularity the grounds and cause for such motion as well as the efforts of the party or the party's attorney to avoid such delay. Upon receipt of such a motion, the court shall schedule a hearing, which may be by telephone conference, and shall decide the motion without delay in order to avoid trial delay awaiting such decision. The adverse party may be heard by affidavits or by argument presented, filed, and served at the time of the hearing.

The trial court did not abuse its discretion in refusing to grant the request for a continuance.

CONCLUSION

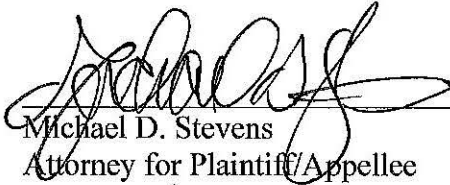
The decision to deny the continuance was not an abuse of discretion and the findings of the trial were not clearly erroneous, and the decision of the trial court should be affirmed.

Hall-Edwards did not file an answer that denied any of the allegations of Scotland's Complaint and thus are deemed admitted. Nor did she file any objections to the trial court's findings of fact nor did she file any alternative findings.

The trial court did not err when it held that the condition of the Hall-Edwards buildings, located at 610 and 620 West Main Street, Scotland, South Dakota, constituted a nuisance pursuant to SDCL 21-10-1(1) or pursuant to the City of Scotland building code. The buildings of Hall-Edwards are a "dangerous building" as defined by the City of Scotland building code; that the condition of the buildings constituted a nuisance; that the condition of the buildings constituted a safety hazard; and that the nuisance needed to be immediately abated to protect the safety and health concerns of the citizens of Scotland.

APPELLEE DOES NOT REQUEST ORAL ARGUMENT.

Dated this 7th day of March, 2025.



Michael D. Stevens
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CERTIFICATE OF COMPLIANCE

I, Michael D. Stevens, attorney for the Plaintiff/Appellee, hereby certifies that the Brief for Appellee contains 6482 words and complies with the type volume limitation as required by SDCL15-26A-66.

Date this 7th day of March, 2025.



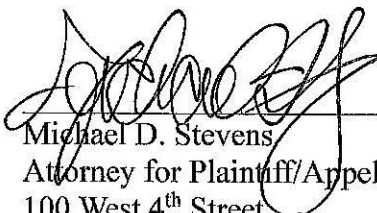
Michael D. Stevens
Attorney for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I, Michael D. Stevens, attorney for the Plaintiff/Appellee, hereby certifies that on the 7th day of March, 2025, I served the BRIEF FOR APPELLEE in the above-entitled matter by e-mail or electronic transmission to upon the Defendant/Appellant by e-mailing a true and correct copy thereof to Melanie Hall-Edwards, mall.larryhallpoa5152@yahoo.com and sending by first class mail, postage fully prepaid, a true and correct copy of the BRIEF FOR APPELLEE to Defendant/Appellant, at PO Box 44, Kaylor, South Dakota 57354.

I, Michael D. Stevens, attorney for the Plaintiff/Appellee, hereby certifies that on the 7th day of March, 2025, I electronically filed with the Clerk of the South Dakota Supreme Court a true and correct copy of the foregoing BRIEF FOR APPELLEE in the above-entitled matter by e-mail or electronic transmission to: Shirley A. Jameson-Fergel, Clerk of the Supreme Court, 500 East Capitol, Pierre, South Dakota 57501-5070, SCClerkBriefs@ujs.state.sd.us.

Date this 7th day of March, 2025.



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APPENDIX

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APPENDIX A

8.0304 Enumeration of Conditions Constituting Nuisance

A building or premises is maintained or kept in a manner which is at variance with and inferior to the level of maintenance of surrounding properties and is hereby declared to constitute a public nuisance where there exists upon any building or premises any of the following conditions:

- 1) buildings which are abandoned, boarded up, partially destroyed or partially constructed and uncompleted subsequent to the expiration of building permit;
- 2) broken windows, doors, attic vents, and underfloor vents;
- 3) overgrown vegetation which is unsightly and/or likely to harbor rats or vermin;
- 4) dead, decayed or diseased trees, weeds or other vegetation;
- 5) lumber, junk, trash, debris or salvage materials maintained upon any premises which is visible from a public street, alley or adjoining property;
- 6) abandoned, discarded or unused furniture, stoves, sinks, toilets, cabinets or other household fixtures or equipment stored so as to be visible at ground level from a public alley, street, or adjoining premises;
- 7) abandoned, wrecked, dismantled or inoperative trailers, campers, boats, and other motor vehicles which are accumulated or stored in non-commercial yard areas visible from a public street or adjoining premises;
- 8) building exteriors, walls, fences, driveways or walkways which are defective or deteriorated or in disrepair or defaced; and
- 9) any like and similar condition or conditions.

APPENDIX B

8.0315 Recover of Expense - Civil Suit

The city may recover the expenses incurred by the building official in abating any nuisance under the provisions of this ordinance from the person creating, permitting or maintaining the same in a civil suit instituted for such purpose.

8.0316 Dangerous Buildings Defined

All buildings or structures which have any or all of the following defects shall be deemed "dangerous buildings":

- 1) Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- 2) Those which, exclusive of the foundation, show thirty-three percent (33%) or more damage or deterioration of the supporting member or members, or fifty percent (50%) of damage or deterioration of the non-supporting enclosing or outside walls or covering.
- 3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
- 4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City of Scotland.
- 5) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.
- 6) Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.
- 7) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
- 8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- 9) Those which because of condition are unsafe, unsanitary or

dangerous to the health, morals, safety or general welfare of the people of the City of Scotland.

10) Those buildings existing in violation of any provision of the Building Code of this city, or any provision of the fire prevention code or other ordinances of this city.

30829

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30829

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

APR 07 2025

Shirley A. Johnson-Lund
Clerk

MELANIE HALL-EDWARDS,

Defendant and Appellant,

Vs.

CITY OF SCOTLAND, A MUNICIPALITY,

Plaintiff and Appellee.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
BON HOMME COUNTY, SOUTH DAKOTA

HONORABLE CHERYLE GERING
CIRCUIT JUDGE

APPELLANT'S REPLY BRIEF

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Notice of Appeal Filed September 9, 2024.

STATEMENT OF CASE

In Steven's 'Statement of Case' he refers to the inspection dated July 28, 2022 several times. He implies that it was part of the report filing for SR27 and shows a requirement to abate a nuisance though it was not a part of the filing of November 2023. The Engineer failed to do an interior inspection in 2023. The City did not have an inspection warrant for 620 Main Street but only for 610 Main Street the first time they entered both buildings. In Case 04CIV22-46 an Administrative Inspection Warrant was filed July 8, 2022, alternate warrant was filed and granted on July 11, 2022. The original AIW denial was filed and denied on July 15, 2022. On July 26, 2022 an additional AIW and A in Support of AIW were filed, according to the Case Summary provided by the Clerk. An Administrative Inspection Warrant for the property 610 west Main Street, Parcel 51.01.14.10, Scotland, SD, marked by the Clerk as filed July 27, 2022 which does not appear on the Clerk Case Summary, was taped to Melanie's door at 1030 First Street, Scotland, SD after its execution, by breaking in, on July 28, 2022. The photos showing the condition of the building accompanying the report August 22, 2023 on the flash drive only contain photos of one building. That is of the 610 Main Street building. As testified by Boice. the only inspection of the interior prior to a motion for demolition occurred on July of 2022 which resulted in a favorable report and deemed the building to not be a safety hazard and had a list of things to remedy which the Appellant testified were remedied found in the Transcript (TR) page 101, Lines (L) 4-8.

Mr. Stevens keeps repeating that the Appellant was trying to avoid service of Scotland's Summons and Complaint and that her son would not disclose the location of implying avoidance knowing full well that I was threatened and told not to return until given permission by Mr. Stevens in 2024. The Answer to the Complaint referred to by Steven's has a categorical denial of all allegations. The affidavit of Boice was accompanied by a thumb drive of most recent photographs. It is clear that most of the photos of the outside of the building are just repeats of the same spot only zoomed in several times over. There are no photos of the South Side of the buildings and the West side of the building or the East side zoomed out. The reason being that the photos would show the opposite of what they are testifying to. There are no bricks falling other than on the places the City would not permit the Appellant to work. Their blocking of progress is causing a delays that have resulted in further damages to the brick façade. Mr. Stevens mentioned that the City filed for a structural inspection but then failed to allow the Engineer to complete one. This is negligible and suspect behavior.

On page 6 of Stven's brief he stated that "Fillingsness personally did numerous external visual inspections of the abandoned and boarded up buildings located at 610 and 620 West Main.... Owned by Hall-Edwards". No matter how many times you tell a lie it does not become the truth. Noone ever proved the buildings were abandoned or boarded up, yet Stevens repeatedly states this in legal documents. At the time of writing this brief the building is still occupied by the owner and has never been abandoned or boarded up.

In point 3. On page 6 referencing Fillingsness testimony “put your hand inside of the wall corner”. In the photos on the flashdrive you can see that area is the area that was going to be repaired by Sueß Construction but the city failed to act upon the permit and all of them went unanswered. In the photo you can see there is a support piece of wood to help with the rotting one. The delays by the city have caused more rotting yet there is no structural problem as the rest of the structure wall has gone unchanged. Point 4, page 6 the testimony mentioned that bricks fell on the south side yet no pictures were provided. They could not provide proof. This is because no bricks fell on the south side. TR34, L11-13 Fillingsness testified under oath the bricks had fallen on the South Side, which is the front of the building where there is public sidewalk. Later in cross by Felts he testifies that he didn’t know if any had fallen from the South Side. TR49 L 19-21. Point 5 Steven’s mentions windows were broke or missing. The key word here, “were” ,as they had been repaired once the Appellant was allowed to do so and proven by the photos submitted by the Appellee in the trial on July 30th 2024. Point 6, page 6 of the Appellee Brief (AB) states the sidewalk had settled. No proof of measurement was given. In comparison, the last photo of this area has no notable change from the first photo taken 2 years earlier. Exhibits on record.

Page 7, paragraph 2, AB states that “Boice testified at the hearing that she had not made any repairs or taken any action to prevent further deterioration of her buildings and that now there were additional problems. (TR 11:13-15)” When indeed that is false and the truth is Boice testified , TR 11:13-15, that “I

subsequently got a call that nothing had been done and that there was additional problems.” So, there it shows that Mr. Stevens, the contact for the city and Mr. Fillingsness reached out to him to tell him that nothing had been done, rather than telling him the truth that they would not allow anything to be done until 2024. The fact that Stevens is willing to change the testimony when provided by Official Transcript is suspect. Point 1, page 7, when mentioning that the superstructure , being the studs TR11 L25, Boice clearly makes evident that he is wanting to condemn the building for reasons other than public safety. This is a fact due to reasoning that if you can not see the “studs” then you can not observe and testify they are “very soft and had rotted”. He admitted there was only one interior inspection TR 22, L9. The observing of studs would only be for the small corner on the north side of the east building. On cross by Felts TR 21-23, Boice is fluctuating in his answers and unsure about a lot of things. Point 3, page 8 is impossible for Boice to know since he did not observe the interior and upon his first inspection it was not so. Point 4, Boice testified that the studs had rotted and the bricks had rotted. He also testified that the nails are rusting and they had rusted off. But you can clearly see the nails in the Appellee’s photos and the Appellant had to grind them off with an angle grinder to apply house wrap on the exposed wood.

Boice refers to bricks as rotting TR 14, L12. Had the Appellee allowed the Appellant to repair windows and tuck point, the mortar would not have gotten water behind it. The mortar is what crumbled not the bricks. It is common knowledge bricks do not rot. Point 11 Boice testifies to a gas leak though he

was not at the property or observing any bricks had hit the meter. This is suspect.

Due to computer problems and lack of time I will summarize here.

The Claim that the buildings constitute a dangerous building per the Building code of Scotland and the lack of due diligence to prove the snow load theory there was a err in judgement. There was not allowed any objections to the court's findings after court ended and a motion was not allowed to provide the evidence of no gas leak for newly discovered information. The Court Clerk said no such motion could be filed at the Circuit level but had to be filed at Supreme Court Level.

Due to the fact that the Judge coerced Counsel for the Plaintiff in Circuit Court, there should not be any reason to believe the law was upheld and due process was granted to the Defendant, now the Appellant. TR27 L20-25. The Transcript does not provide for the entirety of the conversation between Judge Gering and Mr. Stevens. There was emotional emphasis, head nods and gestures to indicate that the answer she was looking for when she asked him if he was "sure you want to rest"? The judge did not allow a recording for verification. However, there is evidence enough in the Transcript. The bottom line is that one of the wisest men of all times did not require people to speak a certain way or write out their lines and he was able to solve disputes in the fairest of manner. I refer to Solomon. The truth won. In this case, I hope you are able to see the truth. The photos are NOT of all of both of the buildings. The

warrant for inspection was only for 610 Main Street and they coupled with 620 Main Street somewhere in there. There was a favorable report by Boice and that is why they would not allow him to go back into the buildings. I am not certain the Supreme Court would be allowed to overturn the decision, even though that would be "justice". I do know that justice will be far off if this case is not remanded. I do know that The Supreme Court is allowed to remand this case and require a fair trial. The use of prosecution as a sword to cut down a person or in this case a protected property is not what Statutes were intended for. In Proverbs 15 verse 2 it says the tongue of the wise uses knowledge rightly. I am counting on wisdom and truth to prevail. SDCL 16-3-3 states that the substantive rights should not be affected by the rules.... Substantive rights not to be affected by rules. No rule promulgated under this chapter shall in any manner abridge, enlarge, or modify the substantive rights of any litigant.

I hope you can see that any possible nuisance was mitigated prior to July 30, 2024.

The Appellee did not have permission to enter 620 Main Street and did not find anything in that building that would constitute a nuisance or danger even though they entered unlawfully. The Appellant is requesting an oral argument.

Dated this 7th day of April 2025

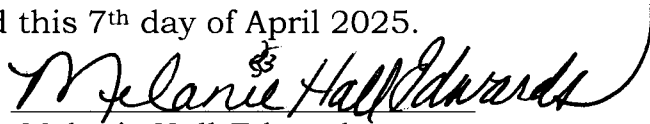
A handwritten signature in black ink that reads "Melanie Hall-Edwards". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Melanie Hall-Edwards, Appellant.

CERTIFICATE OF COMPLIANCE

1. I certify that that the Appellant's Reply Brief is within the limitations provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12pt type. Appellant's Reply Brief contains 1,777 words.
2. I certify that the word processing software is Microsoft Word App For Microsoft 365 (Version2204 and 2412) 64 bit.

Dated this 7th day of April 2025.



Melanie Hall-Edwards
Appellant and Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of April 2025 a true and correct copy of Appellant's Brief in appeal no. 30829, *Melanie Hall-Edwards v. The City of Scotland, A South Dakota Municipality* was served via electronic mail upon Michael D. Stevens, Attorney for the Appellee and Plaintiff, at attymike07@gmail.com & copy to be mailed first class postage prepaid via USPS to 100 W 4th Street, Yankton SD 57078.

Dated this 7th day of April 2025.



Melanie Hall-Edwards
Appellant and Defendant