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May 09 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-002006
Case No. 2019-CP-33-0675

John Pendarvis and Lawton Drew, Respondents,

v.

South Carolina Law Enforcement Division and
South Carolina Department of Agriculture, Defendants,

Of which, South Carolina Law Enforcement Division is..... Appellant.

**REPLY TO RESPONDENTS’ RETURN TO
PETITION FOR REHEARING**

As directed by the Court, the Respondents John Pendarvis and Lawton Drew filed a Return to the Petition for Rehearing filed by the Appellant South Carolina Law Enforcement Division (“SLED”). The Respondents agree with the Court’s determination that the Circuit Court’s order entering a preliminary injunction is

now moot. The Respondents never took that position in briefing or at oral argument.

As a threshold point, the Respondents do not dispute that this Court has appellate jurisdiction to review a preliminary injunction. The existence of appellate jurisdiction is clear. As the Supreme Court has held, “[a]n order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable.” *Curtis v. State*, 345 S.C. 556, 549 S.E.2d 591, 596 (2001). *See also*, S.C. Code Ann. § 14-3-330(4).

Of particular note, the Respondents fail to cite any authority for their newly articulated position that the appeal is moot. In fact, the Respondents fail to specifically address the three errors argued by SLED as to why this Court erroneously dismissed the appeal as moot. For instance, the Respondents do not argue – and have certainly not demonstrated -- that the preliminary injunction at issue has expired or otherwise has been lifted or vacated by the Circuit Court. Clearly, the preliminary injunction remains in effect.

Similarly, the Respondents have not demonstrated that the Circuit Court has issued a final judgment while this appeal has been pending. *Curtis*, 549 S.E.2d at 597 (“an appeal of a temporary injunction is moot where a trial court renders final judgment while the appeal is pending”). Clearly, the merits of the case remain to be decided by the Circuit Court.

Moreover, the Respondents have admitted once again that the Court’s decision is based on a misapprehension of fact of which counsel for the Respondents had previously advised the Court in correspondence dated April 5, 2023. The Respondents confirm that “the harvested hemp has not been sold.” *See*, Respondents’ Return, p. 2. That fact further demonstrates that there still exists a live controversy in that the Respondents continue to be authorized by the preliminary injunction issued by the Circuit Court to sell the crop – a ruling that SLED contends was made in clear error and for which it is entitled to judicial review.

Finally, without citing any authority, the Respondents argue that “even if the injunction was removed, the parties would still have to argue the merits of the case below to resolve the matter.” *See*, Respondents’ Return, p. 2. The fact that the merits remain to be decided, however, does not render a preliminary or temporary injunction moot. Indeed, the very opposite is true -- in *Curtis, supra*, the Supreme Court explained that “temporary injunctions remain in force only until, and expire upon, the entry of the final judgment and are not enforceable after the final judgment has been entered.” 549 S.E.2d at 597. Clearly, a preliminary injunction is intended to remain in effect until there is a decision on the merits. As the Supreme Court has repeatedly held, “[t]he purpose of a preliminary injunction is to preserve the status quo.” *Compton v. South Carolina Department of Corrections*,

392 S.C. 361, 709 S.E.2d 639, 642 (2011). Thus, it defies logic to argue that a preliminary injunction is rendered moot simply because there still must be a decision on the merits rendered in the case. If that were the case, there could never be an appeal taken from an order granting a preliminary injunction and that is counter to the holding in *Curtis*, as well as S.C. Code Ann. § 14-3-330(4), which explicitly allow for an appeal from an order granting a preliminary injunction.

In sum, for the reasons stated in the Petition for Rehearing and herein, the Court is respectfully requested to grant the Appellant's Petition for Rehearing, to withdraw the decision finding the appeal to be moot and to address the merits of the issues raised on appeal.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

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Of which, South Carolina Law Enforcement Division is..... Appellant.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant, does hereby certify that service of the **Reply to Respondents’ Return to Petition for Rehearing** in the above-captioned matter was made upon Respondents’ counsel by email only this the 9th day of May 2023 as follows:

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**Also Admitted in North Carolina*

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Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: John Pendarvis and Lawton Drew v. South Carolina Law Enforcement Division and South Carolina Department of Agriculture
Appellate Case Number: 2019-002006
Civil Action Number: 2019-CP-33-0675
Our File Number: 79.20234

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended May 6, 2022), please find enclosed for filing the **Reply to Respondents' Return to Petition for Rehearing** in the above referenced matter. In accordance with Section (d)(1) of this same Order, I am hereby serving copies on all counsel of record.

If you have any questions, please advise.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Patrick J. McLaughlin, Esquire (w/ Enclosure, Via Email Only)
C. Bradley Hutto, Esquire (w/ Enclosure, Via Email Only)