RECEIVED
May 22 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-000757
Case No. 2021-CP-18-1486

John Trenton Pendarvis …… Respondent,

v.

L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s),……. Defendants,

Of whom, Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division is…… Appellant.

RESPONDENT'S REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

This reply is made pursuant to Rule 201, 240(f) and 269 of the South Carolina Appellate Court Rules. Respondent John Trenton Pendarvis, replies to Appellant's return to his motion to dismiss the appeal filed by Appellant on May 2, 2023.

For over four decades, the proper procedure by which to appeal unappealable interlocutory discovery orders has been well-established in South Carolina. To preserve the right to appeal a discovery order a party must refuse to comply with the order, be cited for contempt, and then appeal the contempt order. This has been clearly established in case law since at least Ex parte

Whetstone, 289 S.C. 580 (1986) and has been repeatedly confirmed since. *See* Hooper v. Rockwell, 334 S.C. 281 (1999); Tucker v. Honda of S.C. Mfrg., 354 S.C. 574 (2003); Wieters v. Bons-Secours St. Francis Xavier Hosp., Inc., 381 S.C. 332 (2009); Metts v. Mims, 384 S.C. 491 (2009); and Davis v. Parkview Apartments, 409 S.C. 266 (2014).

Appellant's return seeks to manufacture alleged potential "fundamentally unfair" prejudice and excuses for why their appeal should be given special treatment and they should not have to follow over four decades of South Carolina appellate court instructions on how to properly appeal unappealable interlocutory discovery orders.

For the reasons below, this Court should give Appellant no special treatment, but should instead require the well-established appellate procedure be followed and dismiss this appeal immediately to avoid further delay and prejudice to the Respondent. For reasons previously argued in the motion to dismiss and below, Respondent would request the Court dismiss the appeal under Rule 269 SCACR, finding Appellants refusal to follow the well-established procedure has been undertaken solely to delay and/or is not in compliance with the rules.

ARGUMENT

I. The trial court's finding that two requests for admission be deemed admitted is not immediately appealable.

In Section I of the return, Appellant characterizes the trial court's deeming two requests for admission "admitted," as being "akin to granting a motion for partial summary judgment" because "the trial court issued binding findings of fact." Return, p.3-4. In doing so, Appellant ignores the specific findings the trial court expressly set out in the order for deeming the requests admitted: the responses failed to comply with Rule 36. *See* Section II(d) Order, p.18-21.

Respondent's requests for admission and Appellant's original responses to those requests dated October 15, 2021 are set out in the trial court's Order:

1) *Admit that SLED sought judicial approval to destroy the Plaintiff's hemp crop.* Denied as stated. Further answering, on September 19, 2019, Special Agent John Neale with the South Carolina Law Enforcement Division (SLED) obtained an arrest warrant for the Plaintiff for Unlawful Cultivation of Hemp. Special Agent John Neale met with Dorchester County Magistrate Judge Ryan Templeton who issued the arrest warrant.

2) *Admit that judicial approval of SLED's action was denied.* The Defendant Keel objects to this request in that the reference to "SLED's action" is vague and ambiguous. The Plaintiff does not specify the "action" to which he is referring. To the extent a response is required, the Defendant Keel denies the request as stated above.

Order, p.18.

The trial court explained Appellant's response to RFA#1 was deficient and improper under Rule 36 because it did not "**fairly meet the substance of the requested admission or specify so much of it as true as required by the rule**." Order, p.18-19, emphasis added. The trial court explained in detail how Appellant's response to RFA#1 failed to comply with the plain language of Rule 36 SCRCP:

> The response evades admitting or denying whether judicial approval was sought for the destruction of the Plaintiff's hemp crop. The request did not ask [Appellant] whether judicial approval had been sought to arrest the Plaintiff. It specifically asked [Appellant] to admit whether judicial approval has been sought **to destroy his hemp crop**. Admitting that SLED sought approval to **arrest** the Plaintiff is a blatant attempt to avoid admitting or denying whether SLED attempted to comply with the August 8, 2019 opinion they received from the South Carolina Attorney General.
>
> Rule 37(a)(3) SCRCP specifically allows this Court to treat an evasive or incomplete answer as a failure to answer. Any denial of a request for admission "must specifically address the substance of the requested admission" and "may not sidestep the request or be evasive." S. Baicker-McKee, *et al.* Federal Civil Rules Handbook at 871 (2009) (citations omitted).

Order, p.19, emphasis in original.

Similarly, the trial court explained in detail how Appellant's response to RFA#2 was also deficient pursuant to the plain language of Rule 36 SCRCP:

> As to RFA#2, the Court does not find that the term "action" as used in the request was vague of ambiguous. Since there were only two requests, the "action" being referred to was readily identifiable.
>
> If [Appellant] could not…legitimately make that connection, he had a duty "to obtain clarification prior to objecting on this point." [Curtis v. Time Warner Entm't v. Advance/Newhouse P'ship, 2013 U.S. Dist. LEXIS 68115, *3 (D.S.C. May 14, 2013)]. Even if the request had been vague or ambiguous, the Plaintiff promptly clarified any legitimate confusion [Appellate] could claim and [Appellant] failed to cure his deficient responses in light of that unnecessary clarification.

Order, p.19.

At the conclusion of this quoted text regarding Appellant's RFA#2 response, the trial court included footnote no.5, which specifically stated:

> The Court notes [Appellant's] supplemental amended responses to these requests served on the [Respondent] **less than 2.5 hours before the hearing** on October 31, 2022. Those responses do not cure the deficiencies and **the Court finds them untimely**. *See* discussion below.

Order, p.19, fn.5, emphasis added.

The last-minute October 31, 2022 supplemental responses the trial court specifically found were untimely, are the same responses that Appellant is attempting to argue to this Court on page 5 of their return.

> 1) *Admit that SLED sought judicial approval to destroy the Plaintiff's hemp crop.* Denied as stated. Further answering, the Defendant Keel admits that Adam Whitsett, General Counsel for the State Law Enforcement Division, contacted the law clerk of Judge Diane Goodstein on September 11, 2019, to request a meeting with Judge Goodstein to discuss a proposed order entitled "Hemp/Marijuana Seizure Order and Order of Destruction" as well as the "Sworn Application for Hemp/Marijuana Seizure Order of Destruction" all of which was also provided to the law clerk with attachments. The proposed order did authorize the seizure and destruction of the Plaintiff's hemp crop, but the order also provided the opportunity for a post-seizure hearing with the following language: "However, former owner(s) of the plants has 7 days from the date of receipt of this Order to request a post-seizure hearing to show cause why the plants in question are not illegal and why they should not be destroyed. Otherwise, the plants will be destroyed." Thus, the proposed order, if signed by Judge Goodstein, would have given the Plaintiff a post-seizure hearing upon request.

2) *Admit that judicial approval of SLED's action was denied.*
Denies as stated. Further answering, the law clerk for Judge Diane Goodstein informed Adam Whitsett that Judge Goodstein was not willing to sign the proposed order entitled "Hemp/Marijuana Seizure Order and Order of Destruction." Judge Diane Goodstein did not hear or adjudicate the merits of the "SLED's action."

See Exhibit 1 to Plaintiff's Response in Opposition to Defendant Keel's Motion to Alter or Amend Order And/or Motion to Reconsider.

The trial court did not deem the requests admitted because it was "determining the truth of disputed facts prior to trial." Rather, as explicitly explained in the trial court's Order, the requests were deemed admitted **because Appellant failed to comply with the plain language of Rule 36 SCRCP**:

> If [Appellant] sought such judicial authorization and the judge denied it, both requests should be admitted and those two relevant material facts would no longer be in controversy…
>
> …Conversely, if [Appellant] did not seek such judicial authorization, or he did and it was approved, then those requests should be denied.
>
> What is not appropriate under the rule, is refusing to admit the specific request by denying "as stated," then admitting things for which no admission was sought in the actual request. A responding party must respond to the request submitted. It is improper and does not comply with the rules for a responding party to respond to a request they want to admit. If a responding party has things they want admitted, they can submit their own requests for admission.
>
> "The answering party that objects to a request for admissions does so at its own peril." Poole at 499 (noting the language of the rule "states, in detail, the requirements for denials, objections, partial admissions, and qualified answers" and that failure to adhere to the plain language of the rule requires that the fact in question be admitted, citing to Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1245 (9th Cir. 1981)).
>
> **I FIND that [Appellant's] RFA#1 and RFA#2 responses fail to comply with Rule 36 and are, hereby, deemed ADMITTED. "Failure to adhere to the plain language of [Rule 36] requires that the fact in question be admitted**." Want v. Bulldog Fed. Credit Union, 2021 U.S. Dist. LEXIS 118096, 18 (D.Md. 2021) (citing to Poole at 499, noting Poole's cite to Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1245 (9th Cir. 1981). *See also* Rule 36 SCRCP.

Order, p.20, emphasis added.

The trial court later explained how even the Appellant's untimely supplemented responses to RFA#1 and RFA#2 failed to comply with Rule 36, specifically finding "[Appellant's] supplemental responses to RFA#1 and RFA#2 insufficient." *Order*, p.25.

Appellant's argument ignores all of the above, focusing solely on a footnote the trial court placed in the section deeming RFA#1 and RFA#2 admitted that "as discussed below, the record shows both requests should have been admitted." Return, p.3, citing to *Order*, p.20, fn.6. As shown by the trial court's placement of that comment in a footnote, that finding was made by the trail court in discussion of sanctions **after** (below) the finding that the request be deemed admitted – it was **not** controlling on the issue of finding the requests deemed admitted.

That those were two separate issues should be clear to Appellant, since the trial court pointed that out in the Order, when addressing Appellant's argument on this issue citing to *Sessions v. Withers*, 327 S.C. 409 (Ct. App. 1997):

> [Appellant] argues that this Court can only award attorney's fees as sanctions regarding his requests for admission responses if the [Respondent] filed and proved they should be admitted by winning a motion for summary judgment or proving the matter at trial, citing to Sessions v. Withers, 327 S.C. 409 (Ct. App. 1997) and Rule 37(c) SCRCP.
>
> The Court disagrees that a requesting party can only "prove the truth of the matter" through a motion for summary judgment or at trial, finding no such requirement in Rule 37(c) or in Sessions. The [Respondent] created an extensive record which the Court finds proves RFA#1 and RFA#2 should have been admitted.
>
> **Even if [Appellant's] interpretations of Rule 37(c) and Sessions were correct, that would not prohibit an award of attorney's fees and costs, as [Appellant's] responses did not comply with Rule 36(a), which states "the provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to this motion." The plain language of Rule 36(a) and Rule 37(a)(4) allows an award of attorney's fees and costs in this matter.**

> I FIND the [Respondent] is entitled to an award of attorney's fees and costs under Rule 36(a), Rule 37(a)(4) and Rule 37(c) SCRCP.

Order, p.29, emphasis added.

Appellant argues that a challenge to the sufficiency of responses in regards to the "truth of the matter asserted" cannot be done "by way of a pre-trial motion but rather after the requesting party proves the truth of the request for admission at trial or alternatively by a post-trial motion. There is no authority to allow a court to determine the truth of disputed facts *prior to trial* or without at least being a dispositive ruling by way of summary judgment." Return, p.5-6, emphasis in original.

That argument ignores the plain language of Rule 36:

> The party who has requested the admissions **may move to determine the sufficiency of the answers** or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. **If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted** or that an amended answer be served. The court may, in lieu of these orders, **determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial**. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule 36(a) SCRCP, emphasis added.

Further, Appellant's argument ignores the Rules of Civil Procedure specifically provide that in dealing with failures to make or cooperate in discovery, trial courts "in which the action is pending may make such orders in regard to the failure as are just, and among others the following: an Order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." Rule 37(b)(2)(A) SCRCP.

In short, Appellant's return mischaracterizes the findings by which the trial court deemed the two requests for admission "admitted," and ignores the specific findings of the trial court's Order, as well as the plain language of Rule 36 SCRCP. Appellant is essentially arguing that this Court should involve itself in determining the sufficiency of request for admission responses. That is exactly the type of discovery matter that our appellate courts do **not** want to be refereeing.

II. The trial court's finding sanctioning Appellant for discovery abuse and awarding attorney's fees and costs is not immediately appealable.

Appellant's return argues that because the trial court's Order required the monetary sanctions to be paid "within thirty days of the filing of this order," that entitles their appeal to special treatment. The argument claims that requiring payment within a certain time "would inhibit or prevent [Appellant's] ability to later appeal that judgment" and that the 30-day time limit imposed by the Order "has eliminated [Appellant's] right to appeal that sanction after final judgment." Return, p.6.

Appellant recognizes "the body of case law holding" that "a party must refuse to comply with a discovery order and be held in contempt before the decision becomes appealable," quoting *Tucker v. Honda of South Carolina, Inc.,* 354 S.C. 574 (2003). Return, p.8. Yet, Appellant then argues "a monetary sanctions order should be treated differently because the sanctioned party is given the unfair (and arguably unconstitutional) choice of paying the sanctions and forfeiting its appeal rights…or otherwise being held in contempt of court – which is a fundamentally unfair choice. For this reason, an order directing that a specific sum of monetary sanctions be paid before final judgment should be deemed an order subject to immediate appeal." Return, p.8.

That is not the law. Nor should it be. At no point, does Appellant even attempt to explain how the current process would ultimately be unfair. If Appellant has valid grounds to appeal the trial court's order and finding of monetary sanctions, then, as *Tucker* makes clear: Appellant has

the right to refuse to comply with the Order, be found in contempt and appeal **that** Order. If successful, and the Order finding the Appellant in contempt is reversed, **how would the Appellant be prejudiced?** Appellant would have paid no monetary sanctions and there would no longer be any finding of contempt against the Appellant.

Appellant cites *Richardson v. Halcyon Real Estate Servs.*, 2023 S.C. App. LEXIS 43 (Ct. App. April 19, 2023), in support of their argument, but *Richardson* does not support Appellant's argument.

In *Richardson*, this Court specifically found "the award of attorney's fees and costs under Rule 37(b)(2) **is interlocutory and not immediately appealable**." Richardson at 5-6, emphasis added. In doing so, this Court cited to several decisions where:

> …federal courts have determined that orders imposing attorney's fees and costs on a party under Rule 37(b) of the Federal Rules of Civil Procedure are interlocutory and not immediately appealable. *See, e.g.*, David v. Hooker, Ltd., 560 F.2d 412, 416 n.6 (9th Cir. 1977) ("Normally, the imposition of the [Federal Rules of Civil Procedure] Rule 37(b)(2) sanction of attorney's fees and expenses upon a non-complying party is considered to be interlocutory."); E. Maico Distribs. Inc. v. Maico-Fahrzeugfabrik, G.m.b.H., 658 F.2d 944, 947 (3d Cir. 1981) ("Sanctions for violation of discovery orders are usually considered interlocutory and not immediately appealable."); *see also* 15B Charles Alan Wright et al., *Federal Practice and Procedure* § 3914.23 (2d ed. 1992) ("Sanctions imposed for violation of discovery orders might seem plausible candidates for appeal on the theory that the sanction is severable from the continuing proceedings. The opportunities for appeal, however, have generally been limited to sanctions that conclude the proceeding or that involve nonparties.").

Richardson at 6, n.3.

In *Richardson*, this Court specifically found that the award of attorney's fees and costs as a discovery sanction "**neither involves the merits of the case nor affects a substantial right and is therefore not immediately appealable**." Richardson at 6, emphasis added. Further, this Court specifically found that "Allowing a party to immediately appeal an interlocutory order imposing

sanctions under Rule 37(b) for deposition misconduct **would further delay the process and drive up costs**." Richardson at 7, emphasis added.

Appellant tries to distinguish *Richardson* by arguing "in that case, the appellant had already paid the time-imposed sanction. The Court was, therefore, not called upon to decide the issues raised by [Appellant] in the case at bar, i.e., whether a sanctions award that includes a time limitation for payment that makes the sanction payable prior to final judgment should be deemed immediately appealable." Return, p.7.

This argument is the same type of hair-splitting-attempt-to-distinguish and receive special appellate consideration that the lawfirm appellant argued to this Court in *Richardson* and this Court refused to accept. *See* Case No. 20019-000671, Final Reply Brief of Appellant, section I. There is no material distinction between the monetary sanctions in *Richardson* and the present case. The order being appealed in *Richardson* imposed the monetary sanction for attorney's fees and costs with a similar time deadline: within fifteen (15) days of the filing of the order in Richardson. *See* Case No. 20019-000671, Record on Appeal, Vol.I, R.16.

The fact the monetary sanction had been paid in *Richardson* was not even considered by this Court in rendering its opinion, despite the issue of "mootness" because the sanctions had been paid being briefed by both parties. *See* Case No. 20019-000671, Final Reply Brief of Appellant, section I and Final Brief of Respondent, Section IV(d).

Put simply, Appellant's attempts to distinguish their appeal from *Richardson* is a distinction of no consequence.[1] To properly appeal the trial court's interlocutory discovery order, Appellant was required to follow the well-established procedure that has existed in this state for

[1] And is certainly no different than the previous unsuccessful attempt to improperly appeal based on the same argument, as discussed in Respondent's motion (p.5, Exhibit 2).

over four decades: refuse to comply, be found in contempt, appeal the contempt order. It is not hard or complicated. Nor would there be any prejudice to a party following that procedure **should they engage in a meritorious appeal and be successful**.

III. The trial court's finding compelling the production of personnel files did not abuse discretion and is not immediately appealable.

Appellant's final attempt to obtain special treatment outside the well-established procedure for properly appealing unappealable interlocutory discovery orders, is to argue that because the trial court's order compelled the production "of non-party employees of SLED without providing protection for confidential or otherwise private information contained therein…the trial court's refusal to provide those protections is immediately appealable." Return, p.8-9.

In making this argument, Appellant fails to inform this Court that Appellant attempted to improperly shift the burden of seeking such protection to the Respondent:

> [Appellant] argued that it was the [Respondent's] burden to obtain a confidentiality order to receive this discovery. The plain language of the rule defeats that argument: "**Upon motion by a party or person from who discovery is sought**, and for good cause shown, the court in which the action is pending…may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense…" Rule 26(c) SCRCP, emphasis added.
>
> The burden is on [Appellant] to request such protection via motion. That burden requires "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." General Dynamics Corp. v. Selb Manufacturing Corp., 481 F.2d 1204, 1212 (8th Cir. 1973) (citing Wright Miller, *Federal Practice and Procedure: Civil*, §2035 at 264-65).
>
> [Appellant] has filed no such motion and his arguments are not persuasive as they did not rise above stereotyped and conclusory statements.

Order, p.14-15, emphasis in original.

Appellant also fails to inform this Court that any concern about personal identifying information was addressed by Respondent specifically responding to Appellant's argument on reconsideration that "the Supreme Court has issued orders requiring redaction of personal

identifiers and information" by pointing out the Supreme Court issued those orders regarding such information in documents filed with the Court and not discovery, then notifying both Appellant and the trial court that:

> [Respondent] has no objection to simple redaction of Social Security numbers, dates of birth, names of minor children or financial account information. But there is no reason for the Court to amend or alter its order to provide protection that [Appellant] never properly requested or sought pursuant to the rules and there is certainly no justification for designating entire personnel files "confidential," especially given the Burton v. York County Sheriff's Dep't holding that such files are subject to production under FOIA. *Order*, p.16.

See Plaintiff's Response in Opposition to Defendant Keel's Motion to Alter or Amend Order and/or Motion to Reconsider, p.9-10.

Appellant's focus that the required production involves "non-party" personnel files ignores the trial court's findings on that issue and settled case law. The trial court specifically found:

> [Appellant's] argument that it is appropriate to ask for protection because the agents/employees are "non-parties" ignores the reason they are "non-parties" is because the South Carolina Tort Claims Act dictates the Plaintiff name only [Appellant] and not the individual SLED agents/employees. South Carolina courts recognize that being a non-party is not grounds for protection. "The rules do not differentiate between information that is private or intimate and to which no privacy interests attach…Thus, the rules often allow extensive intrusion into the affairs of both litigants and third parties." Hamm v. S.C. Public Serv. Commission, 312 S.C. 238, 439 S.E.2d 852, 853-854 (1994).
> All discovery is intrusive. All parties and witnesses in every case would prefer to have court orders in place protecting their information. But to do so would gut a fundamental constitutional right in South Carolina:
>
> > Because South Carolina has a long history of maintaining open court proceedings, this Rule is intended to establish the guidelines for governing the filing under seal of settlements and other documents. Article I, §9, of the South Carolina Constitution provides that all courts of this state shall be public, and this Rule is intended to ensure that the Constitutional provision is fulfilled.
>
> Rule 41.1(a) SCRCP.

Order, p.15.

In *Ex parte Whetstone*, the South Carolina Supreme Court made clear that the proper procedure for appealing unappealable interlocutory discovery orders is no different for non-parties:

> We now hold that an order directing a nonparty to submit to discovery is not immediately appealable.
>
> Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.

Ex parte Whetstone, at 580.

Appellant relies on *Doe v. Howe*, 362 S.C. 212 (2004) and *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1 (2006), comparing the compelling of Appellant's production of basic discovery (personnel files), with a court refusing to protect the identify of a sexual assault victim (*Howe*) and unsealing sealed court records (*Ex parte Capital*). Set aside the audacity of that comparison, Appellant's citation to these cases overlooks a basic fact that led to the Courts allowing the appeals in those cases: revealing certain information was the sole subject of the action being appealed.

In *Howe*, Doe had filed a motion to keep his identity anonymous in pretrial phases of a legal malpractice case arising from prior claims that had come from allegations of sexual abuse. That was the whole point of the motion and the order that was being appealed. Howe at 217.

In *Ex parte Capital*, the entire proceeding before the Family Court that was being appealed, was the husband's Employer's motion to unseal previously sealed divorce proceedings to obtain financial information to use against the husband in a separate civil action. In essence, the order unsealing that action ended any further proceedings in family court, and the *Ex parte Capital* court found the motion was appealable. Ex parte Capital at 7-8.

In both those cases, the matters had reached "the end of the road" and the release of the information was imminent and potentially out of the appellant's control. That is not this case.

Appellant has not lost a motion wherein they made a record showing good cause to protect highly sensitive and personal information. Further, no information would be publicized prior to the Appellant following the well-established proper procedure for appealing an interlocutory discovery order. There is no third party who can produce the compelled personnel files. If Appellant does not comply with the trial court's order, and proceeds to be found in contempt, then appeals that contempt order, no one will have been prejudiced by production of the personnel files, because the personnel files will have not been produced.

To paraphrase a line from *Ex parte Capital*, the cat only leaves the bag if the Appellant **complies** with the trial court's order. This argument is nothing more than a manufactured attempt to create material distinction where there is none. The alleged prejudice/harm does not exist if Appellant follows proper appellate procedure.

IV. The continued attempt by Appellant to pursue this improper frivolous appeal is a continuation of the discovery misconduct being appealed and should be sanctioned pursuant to Rule 269 SCACR.

Even though the imposition of sanctions is usually left to the sound discretion of the trial judge, whatever sanction the judge imposes "should serve to protect the rights of discovery provided by the Rules." Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery. Samples v. Mitchell, 329 S.C. 105, 114 (Ct. App. 1999), internal citations omitted.

The selection of a sanction for discovery violations is within the trial court's discretion. This court will not interfere with that decision unless the trial court abused its discretion. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court **was without reasonable factual support** and resulted in prejudice to the rights of the appellant,

thereby amounting to an error of law. Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198 (Ct. App. 1999), internal citations omitted, emphasis added.

In addressing Appellant's discovery conduct in general, the trial court specifically noted its findings that Appellant's discovery conduct "in this case has been dilatory, prejudicial, willful, intentional and in bad faith and this his responses have been false, misleading, and incomplete," were made "in light of the specific relief sought by the [Respondent] in his motions **and the thorough and extensive record of [Appellant's] discovery conduct evident in the motions, supplemental memorandum and accompanying exhibits of record before the Court**." Order, p.21, emphasis added.

The trial court did not abuse its discretion in any of the above rulings, imposed sanctions allowed by the plain language of the rules, crafted to adequately protect the rights of discovery as established by the rules and did so based upon a "thorough and extensive record" of Appellant's discovery conduct.

The reality is, Appellant wants to be able to further delay and obstruct discovery in this matter by being allowed to proceed with the improper appeal of an unappealable interlocutory discovery order, **while being subject to little consequence for such further delay and obstruction**, because the Appellant knows their appeal of these discovery issues cannot overcome the abuse of discretion standard**.**

Recoverable attorney's fees for appeals is set by order of the South Carolina Supreme Court, and by order dated January 17, 2018, that amount was set at $2,500.00. Therefore, costs and attorney fees awarded for defending this appeal would generally be capped at a relatively minor amount. However, a trial court's sanctions for failing to comply with a court order could be more severe. *See* Rule 37 SCRCP. Further, if the appeal is unsuccessful and the finding of

contempt has been made, the prevailing party would be entitled to interest at a legal rate of return pursuant to S.C. Code §34-31-20.

As previously argued, this improper appeal is simply an attempt by the Appellant to engage in the same conduct which led to the order being appealed: to improperly and unnecessarily delay and obstruct discovery in this case. Appellant could have immediately informed the trial court that they would not comply with the Order and sought a finding of contempt. *See* Metts v. Mims, 384 S.C. 491, 496 (2009) (Party compelled to produce financial information subsequently sought a contempt order to permit them to immediately appeal the discovery order. The trial court issued the contempt order and both parties appealed the contempt order).

Appellant knows the proper procedure by which to appeal. Further, Appellant, through counsel, has in the past moved to withdraw such improper appeals. **Exhibit 3**, p.15-16.[2] Despite that, Appellant proceeds to continue to pursue this improper appeal in clear violation of the rules and well-established case law.

The intention behind this refusal to follow proper procedure is obvious: it is meant to impose further delay with little penalty or consequence.

This improper appeal already sought to frustrate the Respondent's attempts to move this matter forward properly. On the Monday following the expiration of the deadline to comply on Friday (when Appellant filed the appeal at 4:07 p.m.), Respondent attempted to file his motion/petition for Rule to Show Cause. That attempt was frustrated in part because "Due to this case being on Appeal – the motion needs to be filed for a hearing AFTER the case is no longer on appeal status." **Exhibit 4**, p.3. After several phone calls with the Dorchester County Clerk of Court,

[2] Exhibits to this reply are numbered sequentially with the exhibits previously filed with Respondent's motion, thus beginning with "Exhibit 3."

explaining that Respondent needed the motion/petition filed and would be notifying the assigned judge that the hearing would have to await resolution of this improper appeal, Respondent's filing was finally accepted by the Dorchester County Clerk of Court the next morning, Tuesday, May 9, 2023 at 8:30 a.m. **Exhibit 4,** p.4.

Respondent subsequently notified the trial court, Appellant and all opposing counsels of the petition/motion filing and stating:

> As mentioned in the petition and affidavit, [Appellant] appealed the Order this past Friday, right before the thirty (30) day deadline for compliance would have run. However, for reasons outlined in attachment five (5) to the affidavit, [Respondent] believes the appeal to be an improper appeal of an unappealable interlocutory discovery order and we expect the appeal to be dismissed.
>
> As such, we have filed the petition in the hopes that upon such dismissal, we may relay that occurrence to your Honor, and the Clerk of Court, and have a hearing set as soon as possible.
>
> We will notify the Court, and the Clerk's office as soon as that happens.

Exhibit 5, p.2.

Rule 269 of the South Carolina Appellate Court Rules states:

> **Where an appeal**, petition, or motion or return **is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules**, the appellate court may upon its own motion or that of a party, after ten (10) days notice, **impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require**. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari event though the matter may be frivolous.

Rule 269 SCACR, emphasis added.

Appellant wants a free bite at the appellate apple, with the only consequence being the capped attorney's fees and appellate costs. To allow Appellant to engage in this improper appeal with no sanction or finding under Rule 269 SCACR, would allow the type of overly lenient

sanctions this Court found in *Samples* are to be avoided where they result in the inadequate protection of discovery. Samples at 114.

CONCLUSION

Respondent respectfully requests that the Court dismiss the appeal, find the appeal to have been frivolous pursuant to Rule 269 and imposing such sanctions as the Court deems proper given the circumstances of this case and to discourage like conduct in the future.

Respectfully Submitted,

WUKELA LAW FIRM

s/Patrick J. McLaughlin
PATRICK J. MCLAUGHLIN
SC Bar No.: 73675
Post Office Box 13057
Florence, South Carolina 29501
(843)669-5634 – Telephone
(843)669-5150 – Facsimile
patrick@wukelalaw.com
-and-
WILLIAMS & WILLIAMS
C. Bradley Hutto
SC Bar No.: 6436
Post Office Box 1084
Orangeburg, SC 29116
(803)534-5218 – Telephone
(803)536-6298 – Facsimile
cbhutto@williamsattys.com
Attorneys for the Respondents

May 21, 2023
Florence, South Carolina

Exhibit 3

EX.3-000000002

75415

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2014-CP-20-0328

Jordan R. Boyd, ... Respondent,

v.

Leon Lott, in his official capacity as Sheriff of the
Richland County Sheriff's Department ..... Appellant.

NOTICE OF APPEAL

The Appellant Leon Lott, in his official capacity as Sheriff of the Richland County Sheriff's Department appeals the following Orders:

1. Order issued by Circuit Court Judge J. Ernest Kinard, Jr. and filed December 22, 2014; and

2. Order Denying Defendant's Motion to Alter or Amend Order and/or Motion for Reconsideration issued by Circuit Court Judge J. Ernest Kinard, Jr. and filed February 23, 2015.

The Appellant's counsel received written notice of entry of the Order filed February 23, 2015, on March 2, 2015.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant Leon Lott

March 25, 2015

Other Counsel of Record:

Gerald E. Reardon
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201
(803) 978-6111

Jonathan M. Goode
The Goode Law Firm
229 South Congress Street
Post Office Box 1175
Winnsboro, South Carolina 29180
(803) 635-3946

Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2014-CP-20-0328

Jordan R. Boyd, ... Respondent,

v.

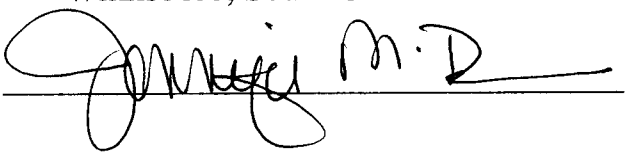
Leon Lott, in his official capacity as Sheriff of the
Richland County Sheriff's Department ..... Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Notice of Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 25th day of March 2015:

Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201

Jonathan M. Goode, Esquire
The Goode Law Firm
229 South Congress Street
Post Office Box 1175
Winnsboro, South Carolina 29180



EX.3-000000006

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

*Also Admitted In North Carolina
†Certified Mediator

Daniel C. Plyler
[illegible]
Justin T. Bagwell
David A. DeMasters
Steven R. Spreeuwers
Todd R. Flippin

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

March 25, 2015

Hand Delivered
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Jordan R. Boyd v. Leon Lott, in his official capacity as Sheriff of the Richland County Sheriff's Department
Civil Action Number: 2014-CP-20-0328
Our File Number: 314.9522

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the **Notice of Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier. I have also enclosed my firm's $100.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

---

cc: (w/ Enclosure)

Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201

Jonathan M. Goode, Esquire
The Goode Law Firm
Post Office Box 1175
Winnsboro, South Carolina 29180

75553

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

C.A. No. 2014-CP-20-0328

Jordan R. Boyd, ... Respondent,

v.

Leon Lott, in His Official Capacity as
Sheriff of the Richland County Sheriff's Department . . Appellant.

MOTION TO DISMISS APPEAL

Respondent Jordan R. Boyd moves the Court to dismiss the appeal in this matter without prejudice. The orders being appealed involve the circuit court's denial of Appellant Sheriff Leon Lott's motion to change venue from Fairfield County to Richland County and the circuit court's denial of Appellant's motion to alter or amend the order denying venue change.

An order granting or refusing a change of venue is not an appealable interlocutory order. *Godley v. Uniroyal, Inc.*, 278 S.C. 571, 300 S.E.2d 78 (1983). An order denying a change of venue does not "affect" a substantial right so as to be an appealable interlocutory order under Section 14-3-330(2)(C) of the South Carolina Code. *Breland v. Love Chevrolet Old, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000).

The right to appeal is a jurisdictional matter and this Court must dismiss the appeal if

the order is not immediately appealable. *Levi v. Northern Anderson County EMS*, 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014), *cert. denied* Jan. 15, 2015. *Cf. Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (2012) (dismissing appeal of order denying motion to transfer venue under *forum non conveniens* argument, and pointing out "an order denying a motion to change venue is not immediately appealable").

Here, Appellant moved to transfer venue under the South Carolina Tort Claims Act, asserting the alleged torts occurred in Richland County. See S.C. Code Ann. § 15-78-100(b) (2005) ("Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.").[1] The trial court disagreed, finding first that Appellant failed to produce any supporting evidence for its motion and thus failed to meet his burden of proof. The court added that Respondent provided sufficient evidence in opposition to the motion to establish that the alleged acts or occurrences (defamation) occurred in Fairfield County. The trial court noted it exercised its discretion in denying the motion to transfer venue.

The trial court's order is correct. But even if it were not, as set forth in the case law above, the Supreme Court has stated recently, repeatedly, and without pause, that an order denying any Rule 12 motion, particularly a motion to transfer venue, is not immediately appealable under Section 14-3-330.

---

[1] Note that Section 15-78-100(b) does not involve the subject matter jurisdiction of the court. *Jeter v. SC Dept. of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006). But even if it did, an order denying a motion to dismiss is not appealable, even if the ground involves an assertion that the lower court lacks subject matter jurisdiction. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), *overruled on other grounds Sabb v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002).

Accordingly, this Court should hold that the orders under appeal are not immediately appealable interlocutory orders under Section 14-3-330, and should dismiss this appeal without prejudice.

Respectfully submitted,

John S. Nichols
SC Bar No. 4210
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599 telephone
(803) 779-8995 facsimile

Attorney for the Respondent

March 31, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

C.A. No. 2014-CP-20-0328

Jordan R. Boyd, ... Respondent,

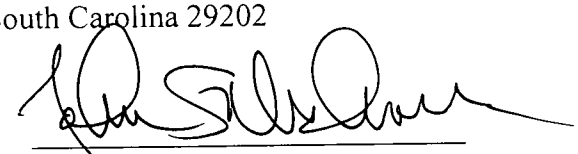
v.

Leon Lott, in His Official Capacity as
Sheriff of the Richland County Sheriff's Department . . Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on Appellant Leon Lott by depositing a copy of the motion in the United States Mail, postage prepaid, on March 31, 2015, addressed to his attorney of record as follows:

Andrew F. Lindemann
SC Bar No. 13030
Robert D. Garfield
SC Bar No. 6557
DAVIDSON & LINDEMANN, P.A.
Post Office Box 8568
Columbia, South Carolina 29202



John S. Nichols
SC Bar No. 4210
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599 telephone
Attorney for the Respondent

March 31, 2015

EX.3-000000012

BNTD

BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

March 31, 2015

RECEIVED
MAR 31 2015
SC Court of Appeals

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jordan R. Boyd v. Leon Lott, in his official capacity as Sheriff of Richland County Sheriff's Department
C.A. No. 2014-CP-20-0328

Dear Ms. Kitchings:

I have been engaged to assist the Respondent, Jordan R. Boyd, in the above-referenced appeal. Please note my appearance.

Also, please find enclosed the original and seven (7) copies of a motion to dismiss the appeal. I have also enclosed a Proof of Service upon counsel for the Appellants. I would appreciate you filing the original and returning the additional filed copy to me via our courier.

Thank you for your attention to these matter. Please let me know if you need anything else.

Sincerely,

John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC

JSN/ms
Enclosures
cc: Andrew F. Lindemann, Esquire
Robert D. Garfield, Esquire
Gerald E. Reardon, Esquire
Jonathan M. Goode, Esquire

EX.3-000000013

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

*Also Admitted In North Carolina
†Certified Mediator

Daniel C. Plyler
Joel S. Hughes
Justin T. Bagwell
David A. DeMasters
Steven R. Spreeuwers
Todd R. Flippin

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

April 10, 2015

Hand Delivered
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
APR 10 2015
SC Court of Appeals

RE: Jordan R. Boyd v. Leon Lott, in his official capacity as Sheriff of the Richland County Sheriff's Department
Appellate Case Number: 2015-000704
Civil Action Number: 2014-CP-20-0328
Our File Number: 314.9522

Dear Ms. Kitchings:

This letter is to request a ten day extension of time until April 20, 2015 to file a return to the Respondent's Motion to Dismiss Appeal with regard to the above referenced matter. Although Respondent's counsel mailed the motion on March 31, 2015, it was not delivered until April 3, 2015. Since that time, I have been out of the office with all days depositions on April 6 and 7, an all day evidentiary hearing before the Procurement Review Panel on April 8, and a motion hearing in Anderson County on April 9.

By my calculation, the Return to Respondent's Motion to Dismiss Appeal will now be due on or before April 20, 2015. No prior extension has been requested. I have enclosed my law firm's $25.00 check for the filing fee. If you require a formal motion, please advise.

Thank you very much for your consideration of this request.

Sincerely,

DAVIDSON & LINDEMANN, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: John S. Nichols, Esquire
Bluestein Nichols Thompson
& Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202

Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201

Jonathan M. Goode, Esquire
The Goode Law Firm
Post Office Box 1175
Winnsboro, South Carolina 29180

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
APR 23 2015
SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2014-CP-20-0328

Jordan R. Boyd, ... Respondent,

v.

Leon Lott, in his official capacity as Sheriff of the
Richland County Sheriff's Department ..... Appellant.

NOTICE OF WITHDRAWAL OF APPEAL

The Appellant Leon Lott hereby gives notice to the South Carolina Court of Appeals and to the Respondent that he will dismiss without prejudice the Notice of Appeal filed on March 25, 2015. In recognition of the position taken by the Respondent in seeking the immediate dismissal of this appeal, the Appellant reserves all rights to seek reconsideration in the Circuit Court or to otherwise appeal, as may

be necessary, from the interlocutory orders of J. Ernest Kinard, Jr. after final judgment.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
ROBERT D. GARFIELD
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Appellant Leon Lott

Columbia, South Carolina

April 23, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2014-CP-20-0328

Jordan R. Boyd, ... Respondent,

v.

Leon Lott, in his official capacity as Sheriff of the
Richland County Sheriff's Department ..... Appellant.

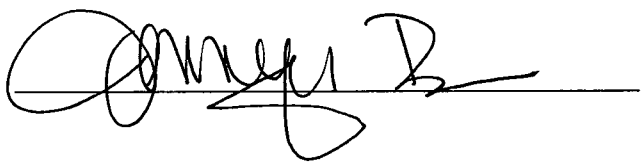
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Notice of Withdrawal of Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 23rd day of April 2015:

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202

Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201

Jonathan M. Goode, Esquire
The Goode Law Firm
Post Office Box 1175
Winnsboro, South Carolina 29180



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H Davidson, II
Andrew F Lindemann*
James M Davis, Jr†
Robert D. Garfield
Michael B Wren

*Also Admitted In North Carolina
†Certified Mediator

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C Plyler
Joel S Hughes
Justin T Bagwell
David A DeMasters
Steven R Spreeuwers
Todd R Flippin

Of Counsel
Kenneth P Woodington

Writer's Email alindemann@dml-law.com

April 23, 2015

Hand Delivered
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Jordan R. Boyd v. Leon Lott, in his official capacity as Sheriff of the Richland County Sheriff's Department
Appellate Case Number: 2015-000704
Civil Action Number: 2014-CP-20-0328
Our File Number: 314.9522

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the **Notice of Withdrawal of Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: John S. Nichols, Esquire *(w/ Enclosure)*
Gerald E. Reardon, Esquire *(w/ Enclosure)*
Jonathan M. Goode, Esquire *(w/ Enclosure)*

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 14, 2015

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Jordan R. Boyd v. Leon Lott
Lower Court Case No. 2014CP2000328
Appellate Case No. 2015-000704

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Andrew F. Lindemann, Esquire
Robert David Garfield, Esquire
Gerald Eugene Reardon, Esquire
Jonathan McCoy Goode, Esquire

The South Carolina Court of Appeals

Jordan R. Boyd, Respondent,

v.

Leon Lott, in His Official Capacity as Sheriff of the Richland County Sheriff's Department, Appellant.

Appellate Case No. 2015-000704

The Honorable J. Ernest Kinard, Jr.
Richland County
Trial Court Case No. 2014CP2000328

ORDER

Appellant wishes to withdraw his appeal. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
April 27, 2015

cc:
Andrew F. Lindemann, Esquire
Robert David Garfield, Esquire
Gerald Eugene Reardon, Esquire
Jonathan McCoy Goode, Esquire

Exhibit 4

EX.4-000000002

From: efiledonotreply@sccourts.org
To: Patrick Mclaughlin
Cc: Rachel Walker
Subject: Received Notice: Your filing, Re: 2021CP1801486 - (399) Torts/Other - Motion/Rule to Show Cause, was received
Date: Monday, May 8, 2023 12:12:07 PM

To:	Patrick James McLaughlin	patrick@wukelalaw.com
From:	efiledonotreply@sccourts.org	
Date:	2023-05-08 12:10:15.763	
Subject:	Your electronic filing, Re: 2021CP1801486 - (399) Torts/Other - Motion/Rule to Show Cause, was received by CIRCUIT COURT.	

Case Number: 2021CP1801486
Case Type: (399) Torts/Other
Document Type: Motion/Rule to Show Cause
Document Type: Affidavit/Attorney
Document Type: Proposed Order/Rule To Show Cause

EX.4-000000003

From: efiledonotreply@sccourts.org
To: Patrick Mclaughlin
Cc: Rachel Walker
Subject: Rejection Notice: Your filing, Re: 2021CP1801486 - (399) Torts/Other - Proposed Order/Rule To Show Cause, was rejected
Date: Monday, May 8, 2023 3:43:25 PM

To:	Patrick James McLaughlin patrick@wukelalaw.com
From:	efiledonotreply@sccourts.org
Date:	2023-05-08 14:15:28.723
Subject:	Your electronic filing, Re: 2021CP1801486 - (399) Torts/Other - Proposed Order/Rule To Show Cause, was rejected by CIRCUIT COURT.

Case Number:	2021CP1801486
Case Type:	(399) Torts/Other
Document Type:	Proposed Order/Rule To Show Cause
Document Type:	Exhibit/Filing of Exhibits
Document Type:	Exhibit/Filing of Exhibits
Document Type:	Exhibit/Filing of Exhibits
Document Type:	Exhibit/Filing of Exhibits
Document Type:	Exhibit/Filing of Exhibits
Document Type:	Motion/Rule to Show Cause
Reason(s) rejected:	Due to this case being on Appeal -the motion needs to filed for a hearing AFTER the case is no longer on appeal status.

EX.4-000000004

From: efiledonotreply@sccourts.org
To: Patrick Mclaughlin
Cc: Rachel Walker
Subject: Accepted Notice: Your filing, Re: 2021CP1801486 - (399) Torts/Other - Motion/Rule to Show Cause, was accepted
Date: Tuesday, May 9, 2023 8:30:57 AM

To: Patrick James McLaughlin patrick@wukelalaw.com
From: efiledonotreply@sccourts.org
Date: 2023-05-08 16:56:03.047
Subject: Your electronic filing, Re: 2021CP1801486 - (399) Torts/Other - Motion/Rule to Show Cause, was accepted by CIRCUIT COURT.

Case Number: 2021CP1801486
Case Type: (399) Torts/Other
Document Type: Motion/Rule to Show Cause
Document Type: Exhibit/Filing of Exhibits
Reason(s) : (none provided)

Exhibit 5

EX.5-000000002

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

May 9, 2023

The Honorable Maite Murphy
5200 East Jim Bilton Blvd.
Post Office Box 802
St. George, SC 29477
(**Electronic delivery only via email to** MMurphyLC@sccourts.org)

Re: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Request for Hearing on Pending Discovery Motions and/or Status Conference

Judge Murphy:

Enclosed please find Plaintiff's *Petition for Rule to Show Cause* and the accompanying *Affidavit in Support of Rule to Show Cause* which we filed yesterday in the above-referenced case, seeking to have the Court rule Defendant Keel in for failure to comply with the Court's February 28, 2023 Order.

Those filings should be showing up in your Honor's queue, but we wanted to forward a copy directly, with a notification about a scheduling issue for any hearing on the Rule to Show Cause.

As mentioned in the petition and affidavit, Defendant Keel appealed the Order this past Friday, right before the thirty (30) day deadline for compliance would have run. However, for reasons outlined in attachment five (5) to the affidavit, Plaintiff believes the appeal to be an improper appeal of an unappealable interlocutory discovery order and we expect the appeal to be dismissed.

As such, we have filed the petition in the hopes that upon such dismissal, we may relay that occurrence to your Honor, and the Clerk of Court, and have a hearing set as soon as possible.

We will notify the Court, and the Clerk's office as soon as that happens.

With kind regards, I am,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

Enclosures

Cc:
Andrew Lindemann (via email only to andrew@ldlawsc.com)
William H. Davidson, II (via email only to wdavidson@dml-law.com)
G. Wade Cooper (via email only to gwc@buyckfirm.com)
George B. Smythe, Jr. (via email only to george@buyckfirm.com)
C. Bradley Hutto (via email only to cbhutto@williamsandwilliams.com)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CIVIL ACTION NO.: 2021-CP-18-01486
John Trenton Pendarvis, Plaintiff, vs. L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s), Defendants.	**PETITION FOR RULE TO SHOW CAUSE**

Plaintiff asks the Court for an order to show cause why Defendant Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division ("KEEL"), should not held in contempt of Court for willful failure and refusal to comply with the Court's February 28, 2023 Order compelling certain discovery and awarding the payment of reasonable attorney's fees and costs as sanctions. Plaintiff brings this petition/motion pursuant to Rule 37(b) SCRCP and relevant, controlling South Carolina case law.

Plaintiff asks the Court to use its contempt powers to coerce Defendant KEEL to comply with the Court's February 28, 2023 Order. Courts have the inherent power to punish for contempt. Willful disobedience of a court order may result in contempt. Civil contempt must be proved by clear and convincing evidence. Durlach v. Durlach, 359 S.C. 64, 71 (2004).

"The purpose of civil contempt is to 'coerce the defendant to do the thing required by the order for the benefit of the complainant.'" Durlach at 71, quoting Poston v. Poston, 331 S.C. 106, 111 (1998).

As shown through the *Affidavit in Support of Rule to Show Cause* executed by Plaintiff's counsel and being filed with this petition, along with the exhibits/attachments to that affidavit, there is clear and convincing evidence that Defendant KEEL has willfully and intentionally failed and refused to comply with the Court's February 28, 2023 Order and should be found in contempt.

As such, the Plaintiff respectfully moves/petitions the Court to set a Rule to Show Cause hearing to call Defendant KEEL before the Court and show cause why he should not be found in contempt of court. In seeking this relief, the Plaintiff would note that Defendant KEEL has improperly appealed the Court's February 28, 2023 Order via a right-before-the-deadline-to-comply appeal filed at 4:07 p.m. on May 5, 2023. Plaintiff has filed a motion to dismiss that improper appeal and is filing this Petition so that the Court may move immediately upon the dismissal of Defendant KEEL's improper appeal to hold the requested rule to show cause hearing as requested by this petition.

Plaintiff would also respectfully request such other relief as the Court deems appropriate, to include an additional award of the attorney's fees and costs incurred by the Plaintiff in seeking compliance with the Court's Order and/or post-judgment interest at the legal rate of interest on the sanctions award of the February 28, 2023 Order, a per-diem penalty to be imposed until full compliance with the Court's order is achieved and any such other relief the Court may find appropriate, following the hearing, pursuant to Rule 37(b) SCRCP.

Respectfully Submitted,

WUKELA LAW FIRM

s/Patrick J. McLaughlin
PATRICK J. MCLAUGHLIN
SC Bar No.: 73675
Post Office Box 13057
Florence, South Carolina 29501
(843)669-5634 – **Telephone**

(843)669-5150 – **Facsimile**
patrick@wukelalaw.com
-and-
WILLIAMS & WILLIAMS
C. Bradley Hutto
SC Bar No.: 6436
Post Office Box 1084
Orangeburg, SC 29116
(803)534-5218 – **Telephone**
(803)536-6298 – **Facsimile**
cbhutto@williamsattys.com
Attorneys for the Plaintiff

May 8, 2023
Florence, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CIVIL ACTION NO.: 2021-CP-18-01486
John Trenton Pendarvis, Plaintiff, vs. L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s), Defendants.	**AFFIDAVIT IN SUPPORT OF RULE TO SHOW CAUSE**

PERSONALLY APPEARED BEFORE ME, **Patrick J. McLaughlin**, who first being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and have personal knowledge of the matters stated herein, which are presented to the best of my knowledge.

2. That via Order dated February 28, 2023, the Court granted the April 11, 2022 filed *Plaintiff's Motion to Compel Discovery from Defendant Keel* and *Plaintiff's Motion to Determine Sufficiency of Defendant Keel's Responses to Plaintiff's Requests for Admission*, compelling specific discovery and directing Defendant KEEL to tender payment within thirty (30) days of the Order in the amount of $11,307.36 Dollars for attorney's fees and costs to Attorney Patrick J. McLauglin, as sanctions for the discovery conduct resulting in the Court's Order. **Attachment 1.**

3. That Defendant KEEL subsequently moved the Court to reconsider and/or alter/amend that Order on March 10, 2023.

4. That Defendant KEEL supplemented discovery via correspondence dated March 30, 2023, specifically noting that the supplementation was not fully complying with the Court's February 28, 2023 Order:

> Please note that the Defendant SLED is **not addressing with these responses and supplemental production the Court's directives regarding the production of personnel files and the payment of the monetary sanction**. Those matters are still at issue and before the Court based on the pending Motion to Alter or Amend and/or Motion for Reconsideration.

Attachment 2, emphasis added.[1]

5. That the Court denied Defendant KEEL's motion to reconsider the February 28, 2023, Order via a Form 4 Order dated April 5, 2023. **Attachment 3.**

6. That more than thirty (30) days have passed since the Court's April 5, 2023, Order and that Defendant KEEL has willfully refused and failed to comply with the Court's February 28, 2023, Order. **Attachment 4.**

7. That instead of complying with the Court's February 28, 2023, Order, Defendant KEEL intentionally and willfully improperly appealed that order, ignoring clear instructions on how unappealable interlocutory discovery orders must be appealed. *See Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2003) (noting a party must refuse to comply with a discovery order and be held in contempt before the decision becomes appealable). **Attachment 5.**

---

[1] Despite stating during the October 31, 2022 hearing that "Now, can I stand here and say they got every single email? Well, we produced the entire files on these two particular incidents, these two particular investigations. To the extent that there may have been some additional emails that he was able to obtain through discovery with the Department of Agriculture, I'm not disputing that, but the bottom line is to suggest that we didn't produce emails along the lines of what was requested for is just absolutely false" (*Transcript of Oct. 31 hearing,* p.52, l.22 – p.53, l.4), it is notable that KEEL's March 30, 2023 partial supplementation increased the discovery provided from **168 pages** to now, a total of **1334 pages.** In other words, the original produced discovery is less than 13% of the partial produced discovery to date.

8. That Defendant KEEL's willful refusal and failure to comply with the Court's Order has caused further delay and prejudice, forcing Plaintiff to expend further time/costs in this matter in filing a Rule to Show Cause Petition to have Defendant KEEL explain why the Court should not find Defendant KEEL in contempt of Court for willfully and knowingly refusing to comply with a Court Order, pursuant to Rule 37(b) SCRCP.

FURTHER AFFIANT SAYETH NOT.

Patrick J. McLaughlin

Subscribed and sworn to before me
this 8th day of May 2023.

Notary Public for the State of SC
My commission expires: 2-26-28

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-000757
Case No. 2021-CP-18-1486

John Trenton Pendarvis …… Respondent,

v.

L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s),……. Defendants,

Of whom, Mark Keel, in his official capacity as Chief of the 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 the undersigned employee of Wukela Law Firm, counsel for Respondent, does hereby certify that service of the Respondent's Reply to Appellants Return to Respondent's Motion to Dismiss in the above-captioned matter was made upon the Appellant's counsel (and other counsel of record) by email only this 21st day of May 2023 as follows:

Andrew F. Linedmann, Esquire
Lindemann Law Firm
Email: andrew@ldlawsc.com

G. Wade Cooper, Esquire
George B. Smythe, Esquire
Buyck, Sanders & Simmons, LLC
Email: gwc@buyckfirm.com
Email: george@buyckfirm.com

William H. Davidson, II, Esquire
Davidson & Wren, P.A.
Email: wdavidson@dml-law.com

C. Bradley Hutto, Esquire
Email: cbhutto@williamsattys.com

s/ *Patrick J. McLauglhin*

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

May 21, 2023

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

RE: John Trenton Pendarvis v. L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s)
Appellate Case Number: 2023-000757
Lower Court Case Number: 2021-CP-18-1486

Dear Ms. Kitchings:

Enclosed please find the ***Respondents' Reply to Appellant's Return to Respondent's Motion to Dismiss*** for filing pursuant to Section(b)(2) of the South Carolina Supreme Court's Order, 2022-05-06-03.

By courtesy copy of this correspondence sent via email only, I am serving all counsel of record, pursuant to Section(d)(1) of that same Supreme Court Order.

If anything further is needed, please let me know.

With kind regards, I am,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM
Enclosure as stated
cc: Andrew F. Lindemann, Esquire *(with enclosure via email only)*
G. Wade Cooper, Esquire *(with enclosure via email only)*
George B. Smythe, Jr., Esquire *(with enclosure via email only)*
William H. Davidson, Jr., Esquire *(with enclosure via email only)*
C. Bradley Hutto, Esquire *(with enclosure via email only)*