

# The South Carolina Court of Appeals

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital and Roper Mount Pleasant Hospital, Respondent,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, Respondents,

AND

Walterboro Community Hospital, Inc, d/b/a Colleton Medical Center, Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Authority, Respondents,

AND

Trident Medical Center LLC, d/b/a Trident Medical Center and Summerville Medical Center, Appellants,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, Respondents.

Appellate Case No. 2020-001323

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ORDER

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This appeal concerns a Certificate of Need for a hospital in Berkeley County. In June, the Court asked the parties what effect recent amendments<sup>1</sup> to the State Certificate of Need and Health Facility Licensure Act had on this litigation, if any. The Court wishes to express its thanks to the parties for their responsiveness to this request.

The 2023 amendments altered the judicial review statutes for Certificate of Need cases to provide "a right to appeal to the Supreme Court." Act. No. 20, §13 of 2023 (amending S.C. Code Ann. § 44-7-210(G) (2018)). The amendments also deleted several references to the court of appeals and substituted references to the supreme court. *Id.* §14 (amending S.C. Code Ann. § 44-7-220 (2018)).

Two of the parties believe these amendments apply to this case and ask that we transfer it to the supreme court. The appellant disagrees and contends jurisdiction remains with this Court.

I am convinced the amendments apply and that the case should be transferred. Precedent suggests a change altering which court hears an appeal is a procedural or remedial change that applies retroactively. A procedural law "sets out a mode of procedure for a court to follow, or 'prescribes a method of enforcing rights.'" *Edwards v. State L. Enft Div.*, 395 S.C. 571, 580, 720 S.E.2d 462, 466 (2011) (quoting Black's Law Dictionary). The change in question does precisely that—it sets out a method (an appeal to the supreme court) for an aggrieved party to enforce the preexisting right to appeal.

This analysis was informed by other precedents as well. Changes to time limits, for example, have been characterized as procedural or remedial because although they alter existing rights, they do not create new rights. *Hooks v. S. Bell Tel. & Tel. Co.*, 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986); *Hercules Inc. v. S.C. Tax Comm'n*, 274 S.C. 137, 262 S.E.2d 45 (1980). The change at issue here—switching the appellate court for these cases to the supreme court—is like those. It does not create any new right, but merely alters the venue for the already established right of

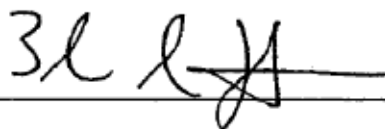
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<sup>1</sup>Act No. 20 of 2023 was ratified on May 11, 2023 and signed by the Governor May 16, 2023.

appellate review. *See also Montgomery v. District of Columbia*, 598 A.2d 162, 166 (D.C. 1991) ("A statute providing for a different tribunal is deemed procedural in nature, for it merely alters the remedy and does not impair vested rights.").

Finally, the amendments instructed that they became effective "upon approval by the governor." Act. No. 20, §16 of 2023. The General Assembly did not exempt pending cases, as it has previously done on multiple occasions. *State v. Brown*, 402 S.C. 119, 126, 740 S.E.2d 493, 496 (2013) (involving the Omnibus Crime Reduction and Sentencing Reform Act of 2010); *State v. Bolin*, 381 S.C. 557, 560, 673 S.E.2d 885, 886 (Ct. App. 2009) (involving the Protection of Persons and Property Act).

For these reasons, this case is transferred to the Supreme Court of South Carolina pursuant to Rule 204 of the South Carolina Appellate Court Rules.



J.

Columbia, South Carolina

cc:

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The Honorable Patricia A. Howard

**FILED**  
**Jul 20 2023**