

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS

AUG 17 2023
SC Court of Appeals

W. Haigh Porter, Master in Equity

Case No. 2021-CP-210-00966
Appellate Case No. 2023-001004

Gail Kathy Andrews

Appellant Pro Se

v.

Dominion Energy

Respondent

MOTION FOR FULL HEARING OF LANDOWNER PRO SE APPEALS OF
RIGHT

Gail Kathy Andrews appeals from the orders of W. Haigh Porter dated December 1, 2022 and May 31, 2023, to the Court of Appeals at Case No. 2023-001004

Dated: August 15 2023

s/ Gail Kathy
Andrews

307 32nd Avenue South
North Myrtle Beach, SC 29582



8/15/23

Motion For South Carolina Court of Appeals' Full Hearing Of Landowner Pro Se Appeal As Of Right From
Final Orders of December 1, 2022, and May 31, 2023

Landowner Pro Se, Gail Kathy Andrews, motions for the hearing of Landowner's appeal as of right from the orders of December 1, 2022 and May 31, 2023. On or about July 14, 2023, Landowner served by certified mail the original Notice of Appeal on the Court of Appeals and on Dominion's attorney, Jessica Crowson. Various extremely minor additions and corrections were requested by the Court. Landowner made the corrections and supplied the appropriate fee to the Court. Landowner is now entitled to notice as to the timely filing of her appeal as of right, and a briefing schedule for arguments on the merits. The state appellate court's failure to file landowner's appeal as of right and move forward with a briefing schedule is a *de facto* dismissal of landowners appeal and it violates the Due Process Clause. Procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.

The right of appeal arises from and is controlled by statutory law. The jurisdiction of appellate courts is prescribed by S.C. Code Ann. § 14-3-330 (1976) and is defined in numerous decisions of this Court and the Court of Appeals. **NC FED. S. & L. ASSOC. v. Twin States Dev. Corp., 347 SE 2d 97 - SC: Supreme Court 1986**

The appealability statute § 14-3-330 states:

[t]he Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, ... and final judgments from such actions; provided, that if no appeal be taken until final judgment is entered the

court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from....

Mid-State Distributors, Inc. v. Century Importers, Inc., 426 SE 2d 777, 780-81, SC: Supreme Court 1993

See **DECLARATION OF RIGHTS, CONSTITUTION OF SOUTH CAROLINA:** Article 1, SECTION 9: Courts; speedy remedy. All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.) Editor's Note The present provisions of this section are identical to former Section 15 of Article I as it existed prior to the 1971 revision. For similar provisions in Constitution of 1868, see Const 1868, Art I, Section 15.

And see: **Rule 201. Right to Appeal: (a) Judgments, Orders and Decisions Subject to Appeal.** Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.

The Court must abide by the dictates of the Constitution of South Carolina. See Declaration of Rights: Article 1, Section 2: Religious freedom; freedom of speech; right of assembly and petition. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE AND TO PETITION THE GOVERNMENT OR ANY DEPARTMENT THEREOF FOR A REDRESS OF GRIEVANCES. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied).

"The right to appeal would be unique among state actions if it could be withdrawn without consideration of applicable due process norms. For instance, although a State may choose whether it will institute any given welfare program, it must operate whatever programs it does establish subject to the protections of the Due Process Clause. See Goldberg v. Kelly, 397 U. S. 254, 262 (1970). Similarly, a State has great discretion in setting policies governing parole decisions, but it must nonetheless make those decisions in accord with the Due Process Clause. See Morrissey v. Brewer, 408 U. S. 471, 481-484

(1972). See also Graham v. Richardson, 403 U. S. 365, 374 (1971); Bell v. Burson, 402 U. S. 535, 539 (1971); Sherbert v. Verner, 374 U. S. 398, 404 (1963); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 165-166 (1951) (Frankfurter, J., concurring). In short, when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution — and, in particular, in accord with the Due Process Clause.” Evitts v. Lucey, 469 US 387 - Supreme Court (1985) (Emphasis supplied).

Due process concerns are involved because the State of South Carolina has set up a system of appeals as of right but refused to offer each appellate plaintiff a fair opportunity to obtain an adjudication on the merits of an appeal. See *Evitts*.

An order which involves the merits is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." Mid-State Distribs. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* at 335 n. 4, 426 S.E.2d at 780 n. 4." **Edwards v. SunCOM, SC: Supreme Court 2006**

“Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution. S.C. Const. art. I § 9 (“[a]ll courts shall be public”); Davis, 304 S.C. at 505, 405 S.E.2d at 603; Nixon, 435 U.S. at 597-98, 98 S.Ct. at 1312, 55 L.Ed.2d at 579-80; Virginia Dept. of State Police v. Washington Post, 386 F.3d 567, 575 (4th Cir.2004); Anderson v. Cryovac, Inc., 805 F.2d 1, 13 (1st Cir.1986).” **Ex parte Capital U-Drive-It, Inc., 630 SE 2d 464 - SC: Supreme Court 2006** Landowner has been denied access to the docket by the Court of Appeals.

“ Public access to courts and their records serves several fundamental interests which are crucial to the proper functioning 11*11 of judicial and government systems. Public access discourages perjury and encourages bringing the truth to light because participants are less likely to testify falsely in a sunlit courtroom before their neighbors than in a private room before court officials. Public access promotes free discussion of governmental affairs by imparting a more complete understanding to the public of the judicial system and issues resolved by that system. Public access serves as a check on inappropriate or corrupt practices by exposing the judicial process to public scrutiny. Lawyers, witnesses, and judges may perform their duties in a more conscientious manner, knowing their conduct will be subject to public scrutiny either at the time of the proceeding or later through disclosure of court records. See e.g. Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 505-10, 104 S.Ct. 819, 821-24, 78 L.Ed.2d 629, 635-38 (1984); Richmond, 448 U.S. at 564-80, 100 S.Ct. at 2821-29, 65 L.Ed.2d at 981-92; Jessup, 277 F.3d at 927-28; Columbus-America Discovery Group v. Atlantic Mut. Ins. Co., 203 F.3d 291, 303 (4th Cir.2000).” Capital-U-Drive-It.

The U.S. Supreme Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. Wolff v. McDonnell, 418 U. S. 539, 557-558 (1974). See, e. g., Phillips v. Commissioner, 283 U. S. 589, 596-597 (1931). See also Dent v. West Virginia, 129 U. S. 114, 124-125 (1889). The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Joint Anti-Fascist Comm. v. McGrath, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful

time and in a meaningful manner." Armstrong v. Manzo, 380 U. S. 545, 552 (1965).

See Grannis v. Ordean, 234 U. S. 385, 394 (1914).

Due process under the South Carolina and United States Constitutions demands that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner where the state seeks to infringe a protected liberty or property interest. Greene v. Lindsey (1982), 456 U.S. 444, 102 S.Ct. 1874, 72 L.Ed.2d 249; Boddie v. Connecticut (1971), 401 U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed.2d 113

"[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." (Boddie v. Connecticut (1971) 401 U.S. 371, 377.) In Mullane v. Central Hanover Trust Co., 339 U. S. 306 (1950), it was said that "[M]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.*, at 313. "The fundamental requisite of due process of law is the opportunity to be heard," Grannis v. Ordean, 234 U. S. 385, 394 (1914), a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest." Mullane v. Central Hanover Trust Co., *supra*, at 314. See also Armstrong v. Manzo, 380 U. S. 545, 550 (1965); Anti-Fascist Committee v. McGrath, 341 U. S. 123, 168-169 (1951) (Frankfurter, J., concurring). . . .

"Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 1 Wall. 223, 233 (1864). Goss v. Lopez, 495 U.S. 565,----- (1975).

In *Dogwood Dev. & Mgmt. v. White Oak Transport*, 657 SE 2d 361 - NC: Supreme Court 2008, the appellate court held the following:


We stress that a party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal. *See, e.g., Hicks v. Kenan*, 139 N.C. 337, 338, 51 S.E. 941, 941 (1905) (per curiam) 366*366 (observing this Court's preference to hear merits of the appeal rather than dismiss for noncompliance with the rules); 5 Am.Jur.2d *Appellate Review* § 804, at 540 (2007) ("[I]t is preferred that an appellate court address the merits of an appeal whenever possible.... [A]n appellate court has a strong preference for deciding cases on their merits; and it is the task of an appellate court to resolve appeals on the merits if at all possible." (footnotes omitted)); Paul D. Carrington, Daniel J. Meador & Maurice Rosenberg, *Justice on Appeal 2* (1976) ("[A]ppellate courts serve as the instrument of accountability for those who make the basic decisions in trial courts and administrative agencies.").

Landowner does not concede that any substantial noncompliance with rules of appellate procedure ever took place. . . . [T]he appellate court may not consider sanctions of any sort when a party's noncompliance with nonjurisdictional requirements of the rules does not rise to the level of a "substantial failure" or "gross violation." In such instances, the appellate court should simply perform its core function of reviewing the merits of the appeal to the extent possible. . . . We clarify, however, that only in the most egregious instances of nonjurisdictional default will dismissal of the appeal be appropriate. *See Hart*, 361 N.C. at 311, 644 S.E.2d at 202 ("[E]very violation of the rules does not require dismissal of the appeal or the issue, although some other sanction may be appropriate, pursuant to Rule 25(b) or Rule 34...."). *Cf. Harris v. Maready*, 311 N.C. 536, 551, 319 S.E.2d 912, 922 (1984) (observing that dismissal for failure to comply with procedural rules is an "extreme sanction ... to be applied only when ... less drastic sanctions will not suffice"). In most situations when a party substantially or grossly violates nonjurisdictional requirements of the rules, the appellate court should impose a sanction other than dismissal and review the merits of the appeal. This systemic preference not only accords fundamental fairness to

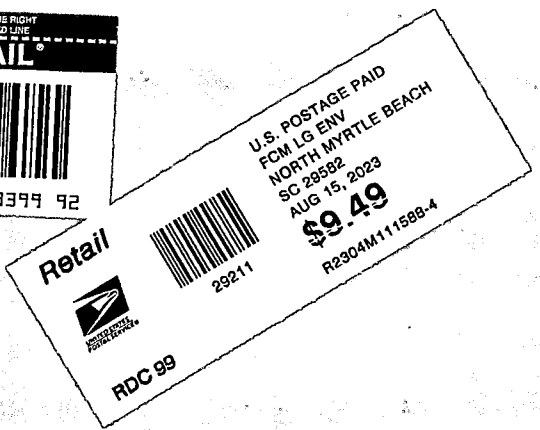
litigants but also serves to promote public confidence in the administration of justice in our appellate courts.” Dogwood. (Emphasis supplied).

A judge cannot determine unilaterally and without process that a landowner cannot exercise the privilege of taking an appeal as of right from a final order. This of course offends against due process and separation-of-powers constitutional authority. “Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence. Nations et al. v. Johnson et al., 24 How., 203; Boswell's Lessee v. Otis et al., 9 How., 350; Oakley v. Aspinwall, 4 Comst., 514”. Baldwin v. Hale, 68 US 223, ---- - Supreme Court (1864). The right to make a defense includes the right to view a docket, notice from the court of an appealable event, issuance of a briefing schedule and the guarantee of being able to file without judicial interference an appeal as of right from a lower court’s final orders.

Respectfully Submitted,

 8/15/23

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