RECEIVED
May 08 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Maite Murphy, Circuit Court Judge

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.

MOTION TO DISMISS AND

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This motion is made pursuant to Rule 201, 240 and 269 of the South Carolina Appellate Court Rules. Respondent John Trenton Pendarvis, moves this Court to dismiss the appeal filed by Appellant on May 2, 2023, as it is a frivolous appeal of an unappealable interlocutory discovery order taken solely for the purpose of delay. For the reasons stated below, this Court should dismiss this appeal to avoid such delay and impose such sanctions as the Court finds appropriate given the circumstances of the case and to discourage like conduct in the future.

BACKGROUND

On September 19, 2019, the Appellant and others entered the Respondent's Dorchester County farm, arrested him, then seized and destroyed his hemp crop. It was the first "enforcement action" taken against a South Carolina farmer growing hemp with a licensed issued pursuant to South Carolina's Hemp Farming Act. The arrest, seizure and destruction of Respondent's hemp crop led to one criminal prosecution (which was *nolle prossed* by the State on or about August 5, 2022) and three separate civil lawsuits that are all still pending: a declaratory judgment and injunction action in the Marion County Court of Common Pleas (C/A No. 2019-CP-33-0675); a 42 U.S.C. §1983 civil rights lawsuit in Federal District court (C/A No. 2:22-cv-03142-BHH-MHC); and the civil lawsuit under state law claims in Dorchester County Court of Common Pleas, from which this appeal arises.

On February 28, 2023, the trial court issued the Order Appellant seeks to appeal, granting the Respondent's *Motion to Compel Discovery from Defendant Keel* and *Motion to Determine the Sufficiency of Defendant Keel's Responses to Plaintiff's Requests for Admission*. In granting the Respondent's motions, finding certain requests for admission deemed admitted, compelling certain discovery responses and awarding $11,307.36 in attorney's fees and costs as sanctions, the trial court found the Appellant's "discovery in this case has been dilatory, prejudicial, willful, intentional and in bad faith and that his responses have been false, misleading, and incomplete." Order, p.21. The trial court further found that the prejudice to the Respondent from Appellant's discovery conduct was "clear, convincing and substantial. Basic discovery in this case has now been delayed for over a year. [Respondent] has been forced by [Appellant] to expend substantial time and resources to obtain initial discovery responses that comply with the rules of civil procedure." Order, p.28.

Appellant filed a motion to alter or amend and/or to reconsider that order, specifically requesting "oral argument" on March 20, 2023. Respondent filed a response in opposition to that motion, specifically asking the trial court deny the motion "as promptly as possible, in order to avoid further prejudice and delay," informing the trial court Respondent's belief that another hearing was unnecessary. The trial court agreed, informing the parties via email dated March 23, 2023, that the trial court would not hold another hearing and would decide the motion on the briefs, allowing the parties the opportunity to supplement their submissions. Appellant asked for, and was allowed time by the trial court, to file a reply to Respondent's response in opposition, filing that reply on March 28, 2023. The trial court subsequently issued a Form 4 order denying Appellant's motion on April 5, 2023.

ARGUMENT

Respondent moves for dismissal of this appeal on the grounds Appellant is seeking to appeal an unappealable interlocutory order which is not immediately appealable. Specifically, Appellant is seeking to appeal an order compelling discovery and sanctioning discovery abuse.

Rule 201 states "appeal may be taken, as provided by law, from any final judgment, appealable order or decision." Rule 201(a) SCACR.

An order compelling discovery does not ordinarily involve the merits of this case and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577 (2003), citing Ex Parte Whetstone, 289 S.C. 580 (1986). Discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statutes, involve the merits of the action or effect a substantial right.[1] Grosshuesch v. Cramer, 377 S.C. 12,

[1] A "substantial right" is when "such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." Mid-State Distribs. v. Century Imps., 310 S.C. 330, 334 n.4. (1993). This is not the case with the order Appellant seeks to appeal.

30 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69 (1965).

Since a contempt order is final in nature, an order compelling discovery may be appealed **only** after the trial court holds a party in contempt. Tucker at 577, citing Hooper v. Rockwell, 334 S.C. 281 (1999), emphasis added. Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. Tucker at 577, citing Ex parte Whetstone.

Despite the above being well-settled law instructing on how a discovery order is **not** an immediately appealable order under Rule 201(a) SCACR and what one must do to properly appeal an interlocutory discovery order, Appellant ignored the rules and the law by filing this appeal.

Respondent's counsel has previously challenged similar improper appeals of discovery orders and this Court has dismissed those appeals. In *Locklear v. Marlboro Co., et al.*, this Court dismissed a similar improper appeal, finding:

> Respondent's motion to dismiss the appeal is granted because the underlying order is not immediately appealable. *See Grosshuesch v. Cramer*, 377 S.C. 12, 20, 659 S.E.2d 112, 122 (2008) ("[T]he fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or effect a substantial right."); *Hamm v. S.C. Pub. Serv. Comm'n.*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). ("Discovery orders…are interlocutory and are not immediately appealable.").

The appellant in *Locklear* petitioned for a rehearing and this Court denied that petition. The appellant then petitioned for a writ certiorari to the South Carolina Supreme Court and that petition was denied. **Exhibit 1**, p. 15-17, Locklear v. Marlboro Co., et al., Appellate Case No.2018-001510, and Appellate Case No.2019-000064.[2]

[2] Respondent would note that the Appellant in this case was a co-defendant in the *Locklear* case. The *Locklear* case was cited to the trail court in the discovery dispute giving rise to this appeal, in

Appellant is well-aware that this discovery order is unappealable, as this Court has previously *sua sponte* dismissed a similar appeal filed by Appellant's counsel, finding:

> This appeal arises out of an order of the circuit court granting the respondent's motion to compel discovery. **Because an order compelling discovery may not be appealed, the appeal is dismissed as interlocutory**. *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**). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rule.

Exhibit 2, p.2, Funny v. Waffle House, Inc. and Christopher Heithaus, Appellate Case No.2019-002081, emphasis added.

The appellant in *Funny* then petitioned this Court for a rehearing, arguing this Court had "overlooked or misapprehended the precise nature of the orders on appeal," attempting to distinguish that because the orders had in addition to compelling discovery, awarded sanctions, that "a non-contempt monetary sanction is an immediately appealable final order." This Court denied that petition for rehearing via order dated July 1, 2020. **Exhibit 2**, p.3-8. The appellant in *Funny* then petitioned the South Carolina Supreme Court for a writ of certiorari and that petition was denied by the South Carolina Supreme Court via order dated April 19, 2021. **Exhibit 2**, p.9-17, Funny v. Waffle House, Inc. and Christopher Heithaus, Appellate Case No.2020-001050.

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.

---

support of Respondent counsel's attorney fee rate, as Appellant was sanctioned for discovery abuse in *Locklear* and required to pay attorney's fees and costs arising from another order compelling discovery.

Rule 269 SCACR, emphasis added.

Respondent argues the above shows that not only should Appellant's appeal be dismissed, but Appellant **knew** his appeal was improper and subject to *sua sponte* dismissal by this Court. The only purpose for Appellant to file this appeal in light of that knowledge was for the improper purpose of delay.

To that end, the timing of Appellant's appeal is notable. The appeal was filed via email sent at 4:07 p.m. on May 5, 2023, the 30th day after the trial court's issuance of the Form 4 order denying Appellant's motion. In other words, Appellant filed this appeal right **before** the Respondent would have been able to move to have Appellant found in contempt. The timing of the appeal is neither accident nor happenstance. This appeal was intentionally filed right before that deadline for compliance to **avoid** Appellant being in contempt of the trial court's order and subject to further sanctions for that contempt. This appeal was intentionally filed in that improper manner despite this Court having previously instructed in *Funny* on the proper way to appeal such an order: be found in contempt pursuant to *Tucker* and appeal the contempt order.

In a case in which the very order being appealed found Appellant to have engaged in conduct that was dilatory, prejudicial, willful, intentional, false, misleading, incomplete and in bad faith, resulting in clear, convincing and substantial evidence that the Respondent was prejudiced by having to unnecessarily expend substantial time and resources, this improper and frivolous appeal itself warrants sanctions. Appellant's continued attempt to appeal in an improper manner that both this Court and the South Carolina Supreme Court have previously refused to accept, supports that sanctions are necessary to stop such improper abuse of the appellate rules.

At a minimum, Respondent would respectfully request the Court make a specific finding that the appeal is being dismissed under Rule 269 SCACR as frivolous, so as to discourage like

conduct in the future. As evidenced by this appeal in light of this Court's prior orders in the *Funny* and *Locklear* cases, merely dismissing this appeal as an unappealable interlocutory order will do nothing to discourage parties like the Appellant from wasting the Court's and opposing parties' time and resources filing such improper appeals going forward. When the record shows that delay and obstructionism has already caused prejudice to the party not bringing the appeal, failure to take any action other than dismissing the appeal would reward such improper and prejudicial appellate conduct.

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 8, 2023
Florence, South Carolina

Exhibit 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, ...Respondent,

vs.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement Division, ... Defendants.

Of whom, Southern Health Partners and Dr. Charles Bush are ..... Appellants.

MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS

Patrick J. McLaughlin
Wukela Law Firm
PO Box 13057
Florence, SC 29504
T: 843-669-5634
Attorney for Respondent

This motion is made pursuant to Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. Respondents Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, move this Court to dismiss the appeal that was filed and served via United States Postal Service on August 16, 2018. The appeal is from an unappealable order and would serve no purpose other than to further unnecessary delay in this matter. For the reasons stated below, this Court should dismiss this appeal to avoid such delay.

BACKGROUND

This is a case involving wrongful death and survival claims arising from an attempted suicide incident involving Roy Locklear while he was in custody at the Marlboro County Detention Center (MCDC) on November 5th and 6th, 2014.1 A summons and complaint were filed in this matter on or about February 24, 2017, following a Notice of Intent to file suit in a medical malpractice case that had been filed pursuant to S.C. Code §15-79-125.

The factual allegations supporting the Plaintiff's causes of action deal with the acts/omissions of the Defendants in transporting, booking and screening the decedent and in failing to provide him the reasonable standard of care necessary for persons with substance abuse issues in a detention center setting. Given the relatively short amount of time Roy was actually in custody at MCDC before his attempted suicide and subsequent transport to the hospital, the allegations against the Appellants (Bush/SHP) arise from the role they play as the "Responsible Physician" for MCDC pursuant to the *Minimum Standards for Local Detention Facilities in South Carolina.*

1 While Roy survived the initial suicide attempt, he never recovered, remaining hospitalized for severe hypoxic anoxic brain injury until his death on November 14, 2014.

The order for which Bush/SHP have noticed their intent to appeal is an order granting the Plaintiff's motion to compel discovery against Bush/SHP for their failure to adequately respond to the Plaintiff's initial discovery requests

On or about May 3, 2017, the Plaintiff served all defense counsels with initial discovery interrogatories and requests for production.

Subsequent to serving those discovery requests Plaintiff's counsel had to contact all of the Defendants due to not timely receiving responses. Ultimately, Plaintiff's counsel had to file a motion to compel against the other Defendants in this matter; said motion being filed on or about December 5, 2017. Bush/SHP were not included in that original motion to compel because they produced discovery responses on or about November 13, 2017. However, in acknowledgement that those initial responses were not adequate, Bush/SHP's counsel contacted Plaintiff's counsel to let him know that he was in the process of trying to get the information to more fully respond.

Via an email dated May 8, 2018, Plaintiff's counsel reminded Bush/SHP's counsel that the Plaintiff was owed supplemental discovery responses and that he needed that material prior to upcoming depositions scheduled for the week of June 11, 2018. Bush/SHP's counsel responded via email that he "should be able to supplement by Wednesday of next week."

On Friday May 18, 2018 (two days after the supplementation response that had been promised the week before), Bush/SHP's counsel sent an email that included a table of contents for Bush/SHP's policies and procedures manual asking Plaintiff's counsel to call to "discuss which items are necessary for this case" and informing Plaintiff's counsel for the first time that Bush/SHP would require a confidentiality agreement, which was in the process of being drafted.

That same day, Plaintiff's counsel responded to that email via a reply email that explained why such proposed responses were inadequate, his objections to a confidentiality agreement and

letting Bush/SHP's counsel know he would be available to discuss the issue during the first part of the following week. Receiving no further communication or any supplemental discovery response, the current motion to compel was filed on June 6, 2018. In that motion, the Plaintiff specifically identified thirteen (13) interrogatories (Nos. 3, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19 and 20) and five (5) requests to produce (Nos. 3, 4, 5, 9 and 11) as being inadequate/non-responsive.

On July 10, 2018, Bush/SHP supplemented their discovery responses and produced a privilege log asserting that a 101-page manual titled "Policy and Procedure Manual for Health Services in Jail" was the "Confidential Work Product of Southern Health Partners, Inc."

On July 11, 2018, Bush/SHP's counsel sent Plaintiff's counsel an email that had attached an affidavit from Jennifer I. Hairsine, identified as the President and Chief Executive Officer of SHP. The email asked if Plaintiff's counsel would reconsider a confidentiality agreement in light of the affidavit and also asked if Interrogatory #18 could be resolved if Bush/SHP provided a list of suicide/suicide attempts at MCDC.

On July 12, 2018, Plaintiff's counsel informed Bush/SHP's counsel via email that his position on neither issue had changed.

On July 13, 2018, a hearing was held before the Honorable Roger E. Henderson on the Plaintiff's motion. Both parties appeared at that hearing through counsel and made argument to the court. Judge Henderson took the matter under advisement and ultimately issued an order which Bush/SHP has noticed an intent to appeal.

ARGUMENT

The Plaintiff moves for dismissal of this appeal on the grounds that Bush/SHP is seeking to appeal an interlocutory order which is not immediately appealable. Specifically, Bush/SHP is seeking to appeal an order compelling discovery.

An order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577, 582 S.E.2d 405, 406 (2003), citing Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986). Discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statutes, involve the merits of the action or effect a substantial right.2 Grosshuesch v. Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965).

Since a contempt order is final in nature, an order compelling discovery may be appealed **only** after the trial court holds a party in contempt. Tucker at 577, 406-407, citing Hooper v. Rockwell, 334 S.C. 281, 513 S.E.2d 358 (1999), emphasis added. Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. Tucker at 577, 407, citing Ex parte Whetstone.

In the present case, Bush/SHP has failed to obtain any such final contempt order and, as such, their appeal should be dismissed.

In their *Notice of Intent*, Bush/SHP cites to the City of Columbia v. A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). However, this case does not support their appeal. In City of Columbia, after they received a FOIA request seeking an internal police report, the City brought a declaratory judgment action seeking clarification under the South Carolina Freedom of Information Act (FOIA). The City had refused to provide the contents of the internal police report and instead sought a declaratory judgment from the trial court that the report

---

2 A "substantial right" is when "such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." Mid-State Distribs. v. Century Imps., 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). That is not the case with the present order.

was exempt from disclosure. As part of their discovery requests, the ACLU asked for the very report that was the subject of the action. City of Columbia at 386, 748.

When the City did not produce the report in response to the ACLU's requests for production, the ACLU filed a motion to compel the report to be provided, which the trial court denied. The ACLU appealed. In denying that appeal, the Court noted that the production of police report was very the subject matter of the case itself. City of Columbia at 388, 749, citing Knight Publishing Co. v. University of South Carolina, 295 S.C. 31, 367 S.E.2d 20 (1988) (a FOIA action in which the plaintiff's discovery requests sought production of documents which were the subject matter of the lawsuit).

Bush/SHP's purpose for citing to the City of Columbia case in support of their right to appeal Judge Henderson's order would appear to arise from the fact that the order at issue discusses FOIA. This reliance is misguided, as the discussion of FOIA in the order at bar arises merely in support of the argument that Bush/SHP are not entitled to any protection for the documents responsive to the Plaintiff's discovery requests because such documents are public records that would be subject to production under FOIA. In other words, whether or not those documents are subject to FOIA is not the subject matter of this case (as they were in City of Columbia and Knight Publishing).3

In the present case, the discussion of FOIA and the production requirements for documents subject to FOIA merely serve as grounds for why the trial court granted the Plaintiff's motion to compel. As Judge Henderson explained in his order:

During the hearing, the Court specifically asked Bush/SHP to explain how the

3 Just because FOIA is mentioned in a case does not make *City of Columbia* controlling. *See* Evening Post Publ. Co. v. Berkeley County Sch. Dist., 392 S.C. 76 (2011).

policies and procedures they were required to have, pursuant to the MSSC, fell within the definition of trade secrets pursuant to S.C. Code §30-4-40(a)(1). Bush/SHP could not offer any response other than a conclusory statement that the material was their proprietary work product.

The Court finds that policies and procedures required under the MSSC do not fall into the above definition. While Bush/SHP may not themselves be a "public body," the policies and procedures they developed and approved (as required by the MSSC for medical screening, care and classification at the Marlboro County Detention Center) are required by the MSSC to be in "the written manual of all policies and procedures for the operation of the facility" and "shall be made readily available to all personnel." MSSC, §1021, p.13.

The purpose of the MSSC requiring these policies and procedures to be in place is obvious: the policies and procedures used to screen, classify and care for persons under the control of the State are clearly a matter of great public concern and interest. If they so desire, the people of Marlboro County have the right to use FOIA to view the policies and procedures for healthcare that will applicable to those individuals providing care for the inmates being held at the County's detention center. The Court finds that this type of material fits squarely within the definition of information that is specifically designated as public information subject to FOIA as "administrative staff manuals and instructions to staff that affect a member of the public." S.C. Code §30-4-50(A)(2).

The Court notes that in her affidavit, Ms. Hairsine testifies that "SHP's sole business is jail health care services – we do not get pulled into other business lines. This allows SHP to be very familiar with state jail standards...as a basis for our policies, procedures, and operations." *Affidavit of Jennifer Hairsine*, ¶3. If that is true, then there is no excuse for Bush/SHP to not realize that the MSSC require that the policies and procedures they create/review/approve for use in South Carolina detention centers and jails must be readily available to all personnel of each facility. MSSC §1021. As such policies and procedures are used by a public body and are instructions to staff that affect a member of the public, they are public information subject to production under the South Carolina Freedom of Information Act. S.C. Code §30-4-20(c) and §30-4-50(A)(2).

Order, p.14-15.

In addition to the grounds explained above, Judge Henderson also found additional grounds for granting the Plaintiff's motion:

The Court finds Bush/SHP fails to meet this burden. Specifically, the only support Bush/SHP offered the Court in support of their argument was the affidavit of Jennifer I. Hairsine, the President and Chief Executive Officer of Southern Health

> Partners, Inc. That affidavit offers only self-serving, conclusory statements such as "this policy manual is confidential and contains proprietary information." *Affidavit of Jennifer Hairsine*, ¶8. There is no attempt to explain to the Court what makes this material proprietary information; just a conclusory assertion that it is. The affidavit contains no specific demonstrations of fact regarding any clearly defined and very serious injury Bush/SHP would suffer if not afforded the protection they seek. Rather, there is only an anecdotal assertion that "SHP has been damaged in the past by former vendors and employees, as well as a former opposing expert witness attempting to access and use SHP's policy and Procedure Manual and other proprietary information to obtain business from SHP's existing and potential clients." *Affidavit of Jennifer Hairsine*, ¶9.
>
> Bush/SHP did not identify to the Court any specific instance of such harm occurring and ignores the fact that the affidavit itself discredits their argument. Simply put, if former vendors, employees and opposing expert witnesses already have access to this alleged proprietary material, how can it be "secret"? "Unlike other assets, the value of a trade secret hinges on its secrecy." Laffite v. Bridgestone Corp., 381 S.C. 160, 674 S.E.2d 154 (2009).
>
> The Plaintiff effectively drove home this point during the hearing by showing the Court that he had obtained forty-nine (49) pages of the 101-page "Policy and Procedure Manual for Health Services in Jails," the alleged proprietary material for which Bush/SHP argues it needs protection. Plaintiff's counsel was able to obtain this material as it had previously been produced in other litigation without any protection. That combined with the admissions in Ms. Hairsine's own affidavit support the fact that the ship has sailed on Bush/SHP's ability to claim this material is secret. "In order to be protected, a trade secret must be the subject of reasonable efforts 'to maintain its secrecy.'" Hartstock v. Goodyear Dunlop Tires N. Am. Ltd., 2018 S.C. Lexis 44, 7-8 (S. Ct. 2018), citing S.C. Code §39-8-20(5)(a)(ii). The protection Bush/SHP asks this Court to grant now is merely an attempt to shut the barn door after the proverbial horse has already left.

Order, p.8-9.

In vacating an opinion from the Court of Appeals that reversed an order compelling discovery, the South Carolina Supreme Court described Tucker as "holding **an order compelling discovery is not immediately appealable** even if it is challenged as violating the attorney-client privilege." Wieters v. Bon-Secours St. Francis Xavier Hosp., Inc., 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009), emphasis added.

If the Wieters court was not willing to immediately review a discovery order that was

alleged to violate attorney-client privilege, the Plaintiff fails to see how the present discovery order is appealable. Bush/SHP's actions appear to be more of the same dilatory conduct which led to the appealed order. As Judge Henderson noted in finding Bush/SHP's discovery conduct to be abusive, Bush/SHP never actually moved for protection. Order p.20. Nor did Bush/SHP ever offer any "explanation for their delay in failing to supplement their responses as they originally represented to the Plaintiff they would do when they submitted their initial response." Order, p.21.

This Court should not allow Bush/SHP to continue to delay this matter by refusing to produce basic discovery.

CONCLUSION

Based on the above, the Plaintiff respectfully requests that the Court dismiss Bush/SHP's appeal on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

Respectfully submitted,

August 27, 2018

Patrick J. McLaughlin
Wukela Law Firm
PO Box 13057
Florence, SC 29504
T: 843-669-5634
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, Respondent,

vs.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement Division, Defendants.

Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

CERTIFICATE OF SERVICE

I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Respondent's Motion to Dismiss and Memorandum In Support of the Motion to Dismiss on the Appellants and Defendants by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on August 27, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

Mark V. Gerde
John E. Tyler
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
T: 803-256-2233
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

Other Counsel of Record:
William H. Davidson, II
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202
Attorney for South Carolina law Enforcement Division

Samuel F. Arthur, III
Aiken Bridges
P.O. Box 1931
Florence, SC 29503-1931
Attorney for Marlboro County, Marlboro County Sheriff's Office,
Marlboro County Detention Center

Kathleen Sue Cox

Kathleen Sue Cox

EX.1-000000013

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

August 27, 2018

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

Re: Appellate Case No. 2018-001510
Common Pleas Case No. 2017-CP-34-00064
Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, Respondent,
vs.
Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement Division, Defendants.
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

Dear Ms. Kitchings:

Enclosed please find for filing the following:

1. Original and six (6) copies of Motion To Dismiss and Memorandum In Support of the Motion to Dismiss;
2. Certificate of Service on the Appellant and Defendants;
3. A filing fee of Twenty-Five ($25.00) Dollars.

Yours truly,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM:ksc
Enclosures

cc:
Mark V. Gerde
John E. Tyler
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

William H. Davidson, II
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202
Attorney for South Carolina law Enforcement Division

Samuel F. Arthur, III
Aiken Bridges
P.O. Box 1931
Florence, SC 29503-1931
Attorney for Marlboro County, Marlboro County Sheriff's Office,
Marlboro County Detention Center

The South Carolina Court of Appeals

Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear,
Respondent,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, and South Carolina Law Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush are Appellants.

Appellate Case No. 2018-001510

ORDER

Respondent's motion to dismiss the appeal is granted because the underlying order is not immediately appealable. *See Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[T]he fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Hamm v. S.C. Pub. Serv. Comm'n.*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) ("Discovery orders . . . are interlocutory and are not immediately appealable.").

FOR THE COURT C. J.

Columbia, South Carolina

FILED
October 4, 2018

cc: John Earle Tyler, Esquire
Mark V. Gende, Esquire
Patrick James McLaughlin, Esquire

The South Carolina Court of Appeals

Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear,
Respondent,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, and South Carolina Law Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush are Appellants.

Appellate Case No. 2018-001510

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Young J.

Paul E. Short, Jr. J.

H. Bruce Williams J.

Columbia, South Carolina

FILED

December 18, 2018

The Supreme Court of South Carolina

Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear,
Respondent,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, and South Carolina Law Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush are Petitioners.

Appellate Case No. 2019-000064

Lower Court Case No. 2017-CP-34-00064

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

June 28, 2019

Exhibit 2

The South Carolina Court of Appeals

Carl Michael Funny, Respondent,

v.

Waffle House, Inc. and Christopher Heithaus,
Appellants.

Appellate Case No. 2019-002081

ORDER

This appeal arises out of an order of the circuit court granting the respondent's motion to compel discovery. Because an order compelling discovery may not be appealed, the appeal is dismissed as interlocutory. *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). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

_____, J.
FOR THE COURT

Columbia, South Carolina

cc:
Andrew F. Lindemann, Esquire
Joshua E. Slavin, Esquire

FILED
January 6, 2020

RECEIVED
JAN 21 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2019-002081
Case No. 2018-CP-18-1960

Carl Michael Funny, ... Respondent,

v.

Waffle House, Inc. and Christopher Heithaus, ... Appellants.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Appellants Waffle House, Inc. and Christopher Heithaus have petitioned this Court for a rehearing of the recent dismissal of this appeal. By Order filed January 6, 2020, the Court *sua sponte* dismissed the Appellants' appeal as interlocutory. The Court determined that "[t]his appeal arises out of an order of the circuit court granting the respondent's motion to compel discovery" and that "an

order compelling discovery may not be appealed." The Appellants respectfully submit that the Court's Order is in error and the Order dismissing the appeal should be vacated or reversed on rehearing.

The Court has overlooked or misapprehended the precise nature of the orders on appeal. The Order filed May 31, 2019, while captioned as an "Order Granting Plaintiff's Motion to Compel Discovery," also grants the Respondent's motion for sanctions. The Order on appeal awards sanctions in the form of attorney's fees and costs against the Appellants in the amount of $784.74. The Appellants have appealed that award of sanctions, which is subject to an immediate appeal.

An order denying or compelling pretrial discovery is generally not directly appealable "because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined." *Ex Parte Wilson,* 367 S.C. 7, 625 S.E.2d 205, 208 (2005). However, "a writ of error will lie ... to a final judgment or an award in the nature of a final judgment." *Good v. Hartford Accident Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209, 212 (1942). A contempt order, for example, is "a final order that is immediately appealable." *Hooper v. Rockwell,* 334 S.C. 281, 513 S.E.2d 358, 364 (1999). This is because "[a] civil compensatory fine is analogous to a tort judgment for damages caused by wrongful conduct." *Jarrell v. Petoseed Co.,* 331 S.C. 207, 210, 500 S.E.2d 793, 794 (Ct. App. 1998). Accordingly, contempt orders involve the merits and are

deemed to be immediately appealable. In fact, in its Order in this appeal, the Court cites *Tucker v. Honda of South Carolina, Inc.*, 354 S.C. 574, 582 S.E.2d 405, 406 (2003), for holding that "a party must refuse to comply with a discovery order and be held in contempt before the decision becomes appealable."

There are no reported South Carolina decisions that address whether a non-contempt monetary sanction is an immediately appealable final order. However, the federal courts generally treat decisions imposing monetary sanctions as final once the court decides the amount of the sanctions. For example, in *Lazorko v. Penn. Hospital*, 237 F.3d 242 (3d Cir. 2000), the Third Circuit ruled that "[a]n award of sanctions is not a final order, and thus not appealable, until the district court determines the amount of the sanction." 237 F.3d at 248. *See also*, *Jafee v. Sundowner Properties, Inc.*, 808 F.3d 1425, 1426 (11th Cir. 1987) ("[b]ecause the amount of attorney's fees has not yet been fixed, the order appealed from is not a final judgment. In a case apparently of first impression in this Circuit, we hold that until the amount of attorney's fees has been determined, a Rule 37(d) sanction order is not final for purposes of appeal under 28 U.S.C. § 1291").

Like a contempt order, an order directing that a specific sum of monetary sanctions be paid should be deemed a final order subject to immediate appeal. The sanctions, like a civil compensatory contempt order, are designed to remedy past noncompliance. *See*, *Jarrell v. Petoseed Co.*, 331 S.C. 207, 210, 500 S.E.2d 793,

794 (Ct. App. 1998) ("[c]ivil compensatory contempt's purpose ... is designed to remedy past noncompliance"). Importantly, there is no further act to be determined by the court to determine the rights of the parties, as in this case, where the monetary sanctions have been established. There is no reasonable basis, therefore, to draw a distinction between civil contempt monetary sanctions and non-contempt monetary sanctions where one form of sanctions is immediately appealable and the other is not. Accordingly, the order granting monetary sanctions, where the amount of the sanctions is conclusively determined, should be deemed a final order that is immediately appealable.[1]

The Court is respectfully requested on rehearing to vacate the dismissal order entered *sua sponte* and to allow this appeal to proceed to the briefing stage, including further briefing and full analysis of the appealability issues which do appear to be of novel impression under South Carolina law.

---

[1] Additionally, the other aspects of the orders on appeal may also be reviewed within this Court's discretion particularly in the interests of judicial economy. This Court has recognized that it "may review an interlocutory order when the order is coupled with an appealable issue." *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680, 688, n.14 (Ct. App. 2008). The Supreme Court has likewise agreed. For example, in *Edge v. State Farm Mut. Automobile Ins. Co.*, 366 S.C. 511, 623 S.E.2d 387 (2005), the Supreme Court acknowledged that "[a]n order that is not directly appealable may be considered if there is an appealable issue before the court." *Id.*, *citing Briggs v. Richardson*, 273 S.C. 376, 256 S.E.2d 544 (1979).

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

BY: _____

ANDREW F. LINDEMANN
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Appellants

January 21, 2020

EX.2-000000008

The South Carolina Court of Appeals

Carl Michael Funny, Respondent,

v.

Waffle House, Inc. and Christopher Heithaus,
Appellants.

Appellate Case No. 2019-002081

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff J.

Paula A. Thomas J.

J.

Columbia, South Carolina

cc:
Andrew F. Lindemann, Esquire
Joshua E Slavin, Esquire

FILED
Jul 01 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Jul 31 2020
S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2019-002081
Case No. 2018-CP-18-1960

Carl Michael Funny, …….…….. Respondent,

v.

Waffle House, Inc. and Christopher Heithaus, …… Petitioners.

PETITION FOR WRIT OF CERTIORARI

ANDREW F. LINDEMANN
LINDEMANN, DAVIS & HUGHES, P.A.
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Petitioners

TABLE OF CONTENTS

CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on July 1, 2020.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in summarily dismissing the Petitioners' appeal for lack of appellate jurisdiction? Is an order requiring payment of a set amount of monetary sanctions, whether by the contempt power or by some other source of judicial authority, an immediately appealable order?

II. Does the Court of Appeals' ruling on appellate jurisdiction violate equal protection? Is there a rational basis to draw a distinction between civil contempt monetary sanctions and non-contempt monetary sanctions where one form of sanctions is immediately appealable and the other is not?

STATEMENT OF THE CASE

This is an appeal from an order of the Circuit Court awarding sanctions against the Petitioners Waffle House, Inc. and Christopher Heithaus. The order set the specific sum for the sanctions and did not delay the payment until final judgment. The Petitioners appealed that order to the Court of Appeals.

Before the Petitioners were afforded the opportunity to file their initial brief and explain the issues to be raised on appeal relative to the sanctions award, the Court of Appeals, acting through a single judge, dismissed the Petitioners' appeal as interlocutory. The dismissal was *sua sponte*. The Respondent never moved for a dismissal of the appeal. The Court of Appeals likewise did not raise an issue of appealability and request briefing. Instead, without first affording basic due process, the appeal was dismissed. The Court of Appeals determined that "[t]his appeal arises out of an order of the circuit court granting the respondent's motion to compel discovery" and that "an order compelling discovery may not be appealed." Yet, in actuality, the order on appeal also awarded a set sum in monetary sanctions subject to immediate payment. In its order, the Court of Appeals did not consider that aspect of the order on appeal, nor address the appealability of that sanctions award.

The Petitioners filed a petition for rehearing, which was summarily denied by order issued on July 1, 2020.

ARGUMENTS

By Order filed January 6, 2020, the Court of Appeals *sua sponte* dismissed the Petitioners' appeal as interlocutory. The Court, acting through one judge, determined that "[t]his appeal arises out of an order of the circuit court granting the respondent's motion to compel discovery" and that "an order compelling discovery may not be appealed." The Petitioners sought rehearing which was summarily denied. The Petitioners submit that they present an order that is immediately appealable and ask this Court to grant a writ of certiorari and to remand with directions that the Court of Appeals allow briefing and adjudication of the appeal on its merits.

The Court of Appeals failed to recognize the precise nature of the orders on appeal. The Order filed May 31, 2019, while captioned as an "Order Granting Plaintiff's Motion to Compel Discovery," also grants the Respondent's motion for sanctions. The order on appeal awards sanctions in the form of attorney's fees and costs against the Petitioners. The Appellants have appealed that award of sanctions, which is subject to an immediate appeal.

According to this Court's precedent, an order denying or compelling pretrial discovery is generally not directly appealable "because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined." *Ex Parte Wilson,* 367 S.C. 7, 625 S.E.2d 205, 208 (2005). However, "a writ of error will lie ... to a final judgment or an award in the nature of a final judgment." *Good v. Hartford Accident Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209, 212 (1942). This Court has held that a contempt order, for example, is "a final order that is immediately appealable." *Hooper v. Rockwell,* 334 S.C. 281, 513 S.E.2d 358, 364 (1999). This is because "[a] civil compensatory fine is analogous to a tort judgment for damages caused by wrongful conduct." *Jarrell v. Petoseed Co.,* 331 S.C. 207, 210, 500 S.E.2d

793, 794 (Ct. App. 1998). Accordingly, contempt orders involve the merits and are deemed to be immediately appealable. In fact, in its order in this appeal, the Court of Appeals cited *Tucker v. Honda of South Carolina, Inc.*, 354 S.C. 574, 582 S.E.2d 405 (2003), for holding that "a party must refuse to comply with a discovery order and be held in contempt before the decision becomes appealable." 582 S.E.2d at 406.

There are no reported South Carolina decisions that address whether a non-contempt monetary sanction is an immediately appealable final order. However, like a contempt order, an order directing that a specific sum of monetary sanctions be paid should be deemed a final order subject to immediate appeal. The sanctions, like a civil compensatory contempt order, are designed to remedy past noncompliance. *See*, *Jarrell v. Petoseed Co.,* 331 S.C. 207, 210, 500 S.E.2d 793, 794 (Ct. App. 1998) ("[c]ivil compensatory contempt's purpose … is designed to remedy past noncompliance"). Importantly, there is no further act to be determined by the court to determine the rights of the parties, as in this case, where the monetary sanctions have been established. The Circuit Court did not delay the imposition of the sanction until final judgment.

Furthermore, there is no discernible or reasonable basis to draw a distinction between civil contempt monetary sanctions and non-contempt monetary sanctions where one form of sanctions is immediately appealable and the other is not. The appellate courts and jurisdictional statutes are subject to the dictates of equal protection, just as other governmental actors and statutory law are. *See*, *In the Interest of Shaw*, 274 S.C. 534, 265 S.E.2d 522 (1980) (addressing equal protection challenge to jurisdictional statute). As the South Carolina Constitution mandates, no person shall be denied the equal protection of the laws. S.C. Const. art. I, § 3. "To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under

similar circumstances, and (3) the classification must rest on some rational basis." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462, 469 (2004). Therefore, an order requiring a set amount of monetary sanctions, whether by the contempt power or by some other source of judicial authority, should be deemed an appealable order. There is no rational basis for distinguishing between the two orders where a final monetary amount is set by the lower court.

At the very least, the issue raised by the Petitioners should proceed to full briefing and adjudication given the novel issues raised. The appeal should not have been summarily dismissed *sua sponte*. The Petitioners request that a writ of certiorari be issued so that thedismissal order entered *sua sponte* may be vacated and this appeal be allowed to proceed to the briefing stage, including, if necessary, further briefing and full analysis of the appealability issues which are of novel impression under South Carolina law. Ultimately, the order granting monetary sanctions, where the amount of the sanctions is conclusively determined, should be deemed a final order that is immediately appealable so that equal protection of the laws is satisfied.

CONCLUSION

Based on the foregoing discussion, the Petitioners respectfully request that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Petitioners

July 31, 2020

The Supreme Court of South Carolina

Carl Michael Funny, Respondent,

v.

Waffle House, Inc. and Christopher Heithaus,
Appellants.

Appellate Case No. 2020-001050

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina
April 19, 2021

cc: Joshua E Slavin, Esquire
Andrew F. Lindemann, Esquire
The Honorable Jenny Abbott Kitchings

RECEIVED
May 08 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Maite Murphy, Circuit Court Judge

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 the Respondent, does hereby certify that service of the Respondent's Motion to Dismiss and Memorandum in Support of Motion to Dismiss in the above-captioned matter was made upon to the Appellant's counsel by email only this 8th day of May 2023 as follows:

Andrew F. Lindemann, Esquire
Lindemann Law Firm, P.A.
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
Williams & Willams
Email: cbutto@williamsattys.com

s/ Patrick J. McLaughlin

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 8, 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)
Lower Court Case Number.: 2021-CP-18-1486

Dear Ms. Kitchings:

Enclosed please find the Respondents' ***Motion to Dismiss and Memorandum in Support of Motion to Dismiss*** for filing pursuant to Section(b)(2) of the South Carolina Supreme Court's Order, 2022-05-06-03. Pursuant to Section(c) of that order, a firm check for the filing fee of Fifty ($50.00) Dollars will be placed in USPS and go out today with a copy of this correspondence.

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/rbw
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)*