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S.C. SUPREME COURT

Exhibit 1

EX.1-000000002

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

RECEIVED
AUG 28 2018
SC Court of Appeals

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

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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

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PO Box 13057
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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):

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T: 803-256-2233
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Kathleen Sue Cox

EX.1-000000013

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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:
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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: _____

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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

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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

Exhibit 3

State of South Carolina	)	Court of Common Pleas
	)	First Judicial Circuit
County of Dorchester	)	Case No. 2021-CP-18-01486
	)	
	)	
John Trenton Pendarvis,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Dorchester County Sheriff, et. al.,	)	
	)	
	)	
Defendants.	)	
	)	

October 31, 2022
Via WebEx

B E F O R E:

The Honorable Maite' Murphy, Judge

A P P E A R A N C E S:

Patrick J. McLaughlin, Esquire
Brad Hutto, Esquire
Attorneys for the Plaintiff

Andrew F. Lindemann, Esquire
Attorney for the Defendant Keel

George Smythe, Jr., Esquire
Attorney for the Defendant Knight

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

Your Honor, I greatly appreciate your -- your graciousness in allowing -- allowing me the time to do this. I will now stop sharing my screen and turn it back over to you and Mr. Lindemann.

THE COURT: Response, Mr. Lindemann?

MR. LINDEMANN: Yes, Your Honor. May it please the Court. Andrew Lindemann for Chief Mark Keel in his official capacity.

Your Honor, first of all, let me -- let me start out with some -- some obvious points here. Despite what Your Honor just heard and the PowerPoint presentation -- which is no different than submitting a brief to the Court and, obviously, that was not provided to opposing counsel ahead of time. So I have no way of determining whether the information provided to you, number one, where it came from, number two, had the ability within -- you know, and it was not disclosed, obviously, two days before the hearing and, obviously, I didn't have the opportunity to look at it before the hearing to be able to address any of the specifics contained in it.

I saw just as quickly as he went through the slides as you did. So I want that to be noted on the record, and I believe that that is improper and a violation of Rule 6, which requires anything to be -- anything in support of the motion to be filed with the motion itself. So again, I think that was -- presents a tremendous level of unfairness to try to

protected just ignores the lengthy case law in this state, as well as statutory law dealing with Freedom of Information Act, which recognizes that personnel matters are actually subject to executive session, that you can't even discuss personnel matters in open session.

So those shouldn't be -- if you can't discuss personnel matters in open session, you sure shouldn't have to produce people's personnel records without any type of protection for confidentiality or privacy. It is well known that there are personal identifiers in personnel files. There are medical records often in personnel files, Worker's Comp claims in personnel files, and it is not out of the question to ask for some type of protection, particularly where the records that are being asked are for non-parties.

The only party in this case is Chief Keel in his official capacity. All of the employees of SLED are not parties to this case and, therefore, it would be a disservice to those individuals to produce those records without any type of Court protection.

And we are certainly willing and able to produce any portions of those records that the Court believes are relevant or may lead to the discovery of relevant information that are proportional to the allegations of this case, as required by Rule 26, but we ask to do so with the protection of the Court to prohibit any type of disclosure to third parties with no

statements between and information contained from an insured and an insurance company adjuster are not protected by the attorney/client privilege. And we asserted the same response to both of those requests, and they are not boilerplate whatsoever.

First of all, I responded by saying the defendant Keel is not in possession of the claims file created by and in the possession of the South Carolina Insurance Reserve Fund. As Your Honor well knows, I was retained through the Insurance Reserve Fund to represent Chief Keel.

The Insurance Reserve Fund is not my client. They are an agent of my client, but they are not my client and they are my -- they're the agent of a client under certain -- certain respects in dealing with the handling of litigation, but ultimately, Your Honor, I do not have possession, nor does Chief Keel, of any claims file created or in the possession of the Insurance Reserve Fund.

I also went on to explain, upon information and belief there are likely no documents responsive to this request. It is believed that the IRF's first notice of the claim was receipt of the lawsuit from SLED on August 31, 2021, and it was assigned to the undersigned counsel on September 1, 2021. So I gave him a response that there would be no documents that would be responsive to his request that occurred prior to the assignment of counsel, other than receiving the complaint

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

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

Exhibit 6

From: Andrew Lindemann
To: "Murphy, Maite"; Murphy, Maite Law Clerk (Jewell Gearding)
Cc: Patrick Mclaughlin; Murphy, Maite Secretary (Robin Dukes); "wdavidson@dml-law.com"; "gwc@buyckfirm.com"; "george@buyckfirm.com"; "cbhutto@williamsattys.com"
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486
Date: Wednesday, December 21, 2022 2:09:14 PM

Thank you, Your Honor. Please understand that I was not suggesting that you do sign orders without careful review, I was simply noting an objection that this proposed order went far beyond the Court's directions. I am more accustomed to lawyers who submit proposed orders that follow the Court's guidance and not take it upon themselves to write an order that they hope the judge will sign.

Thank you for your consideration of my comments and giving me time to get you those comments. I remain happy to assist as needed.

Best wishes for the holidays.

Andrew

From: Murphy, Maite <mmurphyj@sccourts.org>
Sent: Wednesday, December 21, 2022 1:48 PM
To: Andrew Lindemann <Andrew@ldlawsc.com>; Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>
Cc: Patrick McLaughlin <patrick@wukelalaw.com>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; 'wdavidson@dml-law.com' <wdavidson@dml-law.com>; 'gwc@buyckfirm.com' <gwc@buyckfirm.com>; 'george@buyckfirm.com' <george@buyckfirm.com>; 'cbhutto@williamsattys.com' <cbhutto@williamsattys.com>
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Mr. Lindemann:

Thank you for your submission below of your objections. Please note that this Court does not just sign proposed Orders without careful review to ensure they are in accordance with what the Court's ruling is. Should I require any further submissions, I will inform all parties.

Best regards,

Maite Murphy
Circuit Court Judge
5200 E. Jim Bilton Blv.
St George, SC 29477
(843)832-0391
mmurphyj@sccourts.org

From: Andrew Lindemann <Andrew@ldlawsc.com>
Sent: Wednesday, December 21, 2022 12:38 AM
To: Murphy, Maite <mmurphyj@sccourts.org>; Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>
Cc: Patrick McLaughlin <patrick@wukelalaw.com>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; 'wdavidson@dml-law.com' <wdavidson@dml-law.com>; 'gwc@buyckfirm.com' <gwc@buyckfirm.com>; 'george@buyckfirm.com' <george@buyckfirm.com>; 'cbhutto@williamsattys.com' <cbhutto@williamsattys.com>
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Judge Murphy:

Forgive me, but I failed to mention two additional points. Certainly, the Defendant Keel objects to the imposition of a per diem penalty. The order cites no authority for such a measure, and clearly Your Honor did not direct that any such penalty be included in the proposed order. A per diem penalty would act as a contempt sanction without there ever being a violation of an existing court order or a rule to show cause issued (supported by a verified petition as required by law) or a contempt hearing held. I also dispute whether any offending conduct that the Court may find warrants such a drastic and unprecedented measure.

Additionally, I also note that the order requires the award of attorney's fees with thirty days of the order or be subject to the per diem penalty. I know of no authority under Rule 37 or any statutory authority to place a time limitation on the Defendant's payment and none is cited in the proposed order. Instead, an award of attorney's fees should be entered as a judgment and should be treated as any other judgment is treated under South Carolina law. Moreover, with all due respect, a court has no authority to circumvent or extinguish the Defendant's right to appeal that judgment/sanctions award by placing a time limitation on the Defendant's ability to satisfy the judgment and to also subject a per diem penalty to compel payment before any appeal time may run. I believe what Mr. Mclaughlin has included in this proposed order would ultimately be deemed an error of law and an abuse of discretion.

Thank you for allowing me to add these additional points.

Andrew

Andrew F. Lindemann
Lindemann & Davis, P.A.

5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldlawsc.com

From: Andrew Lindemann
Sent: Wednesday, December 21, 2022 12:00 AM
To: 'Murphy, Maite' <mmurphyj@sccourts.org>; Murphy, Maite Law Clerk (Mark A. Hinds) <mmurphylc@sccourts.org>
Cc: Patrick McLaughlin <patrick@wukelalaw.com>; 'Murphy, Maite Secretary (Robin Dukes)' <mmurphysc@sccourts.org>; 'wdavidson@dml-law.com' <wdavidson@dml-law.com>; 'gwc@buyckfirm.com' <gwc@buyckfirm.com>; 'george@buyckfirm.com' <george@buyckfirm.com>; 'cbhutto@williamsattys.com' <cbhutto@williamsattys.com>
Subject: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Judge Murphy:

Thank you for the opportunity to submit comments to the proposed order that was submitted by Patrick McLaughlin on behalf of the Plaintiff on the Motion to Compel that you heard on October 31, 2022.

I have had the opportunity to review the 32-page order that was prepared. I would initially note and object to the fact that that proposed order goes far beyond the directions that were provided by Your Honor, through your law clerk, as to the Court's rulings.

On November 22, 2022, Ms. Gearding sent an email with the following instructions from Your Honor: "Your Honor has requested Mr. McLaughlin to prepare a proposed Order granting the relief requested in your motion to compel. Your Honor finds that the Requests for Admission No. 1 and 2 are admitted for the reasons as outlined in the Plaintiff's memorandum and presentation during the hearing. The Plaintiff's motion that the responses be published as evidence to a jury will be left to the discretion of the trial Judge. Further, please submit and affidavit of attorney's fees and costs incurred in the preparation of this motion."

That was the extent of the directions that the Court provided, and that resulted in this 32-page proposed order that far exceeds those instructions. The Defendant Keel certainly objects to any process where the Plaintiff is given carte blanche to draft and submit a proposed order that is not based on the specific directions provided by the Court.

As you will recall from the October 31, 2022 hearing, the Plaintiff contended that the hearing addressed the Motion to Compel filed on April 11, 2022, as well as additional grounds that were not raised by any subsequent motions but rather by "memoranda"

that were filed at later dates. There was only one Motion to Compel filed, and that was the only motion that was listed on the motions docket – that being the Motion to Compel filed April 11, 2022. When an objection was raised to the Court hearing new issues that were not raised by motion but rather were submitted in later filed "memoranda," Your Honor indicated (based on my memory and notes) that you were only adjudicating the issues actually raised in the April 11, 2022 Motion to Compel. That would also certainly explain the instructions that you law clerk gave to Plaintiff's counsel in her November 22, 2022, which did not address any of the other discovery issues that were raised not in the motion but by way of the later filed "memoranda."

By way of example, the proposed order has this Court granting the Motion to Compel filed April 11, 2022; however, as the proposed order has been drafted, the Court is addressing the sufficiency of the Defendant Keel's responses to the Plaintiff's Second Set of Requests for Admissions. However, the Second Set of Requests for Admissions were not even served by the Plaintiff until April 20, 2022 – nine days after the Motion to Compel was filed – and were not answered by Defendant Keel until May 20, 2022 – which was 39 days after the Motion to Compel was filed. Clearly, a Motion to Compel cannot address discovery that had not even been served or answered. Yet, that is the absurdity that we have given the way that the Plaintiff has proceeded. If there is an issue with the Defendant Keel's responses, that should have been raised by motion but it was not. Based on your comments at the close of the hearing, I believe that you understood and agreed with that very point – I recall distinctly that you indicated that you would only be addressing those issues raised in the Motion to Compel filed April 11, 2022. This proposed order goes far beyond that, and I frankly do not believe you directed that the proposed order was to address such issues that had never been raised by motion.

The proposed order also states that Your Honor provided the Defendant Keel with the opportunity to file a supplemental memorandum at the close of the hearing. I have no recollection or note of that. Again, I understood that the Court would not take up or adjudicate the issues raised in the "memoranda" but not raised in the Motion to Compel.

Finally, the proposed order cites little South Carolina case law. Rather, the order cites numerous federal cases particularly on the issue of the requests for admissions. I respectfully ask the Court to reconsider the *Sessions v. Withers* case (488 S.E.2d 888) in which the Court of Appeals addresses how and when a court may award attorney's fees under Rule 37, SCRCP. The Court of Appeals explained that attorney's fees may be awarded only after the requesting party is successful in providing the truth of the matter raised in the request for admission. That is not 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 absolutely no authority to allows a court to determine the truth of disputed facts *prior to trial*. That honestly is inconsistent with all pre-trial procedure – including how dispositive motions are handled where disputed facts are never determined by the court. Nonetheless, even if the Plaintiff argues that the facts are undisputed, that would first need to be presented to the Court by way of a Rule 56 motion and not by way of a Rule 37 motion. If the Court orders certain requests for admissions to be

deemed admitted by way of a pre-trial Rule 37 motion, the Court is determining facts and is in essence granting partial summary judgment on those factual questions. That is clearly not consistent with the Court of Appeals' decision in *Sessions.*

As for the award of attorney's fees under Rule 37(c), that is premature for the same reasons stated above and given the clear guidance in the *Sessions* decision. Moreover, we object to the $500 hourly rate. There is no supporting affidavits or evidence provided by the Court to justify such a high hourly rate. In addition, many of the hours claimed by Mr. McLaughlin are for the preparation of the after-filed "memoranda" that the Court indicated it would not be adjudicating given that those issues were not raised in the Motion to Compel filed on April 11, 2022, and which was the motion scheduled on the docket for the hearing.

Thank you for your consideration of these points. If you wish for me to prepared a proposed order that addresses the rulings in your law clerk's email from November 22, 2022, I am happy to do so. I would respectfully ask that the Court allow for due process and not sign the 32-page proposed order submitted.

Andrew

Andrew F. Lindemann
Lindemann & Davis, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldlawsc.com

From: Andrew Lindemann
To: "Murphy, Maite"
Cc: Murphy, Maite Law Clerk (Jewell Gearding); Mira Watson; Patrick Mclaughlin; Murphy, Maite Secretary (Robin Dukes); Vicky Ware; wdavidson@dml-law.com; gwc@buyckfirm.com; george@buyckfirm.com; cbhutto@williamsattys.com
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486
Date: Monday, December 19, 2022 6:13:04 PM

Thank you Judge Murphy.

-----Original Message-----
From: Murphy, Maite <mmurphyj@sccourts.org>
Sent: Monday, December 19, 2022 5:30 PM
To: Andrew Lindemann <Andrew@ldlawsc.com>
Cc: Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>; Mira Watson <mwatson@wukelalaw.com>; Patrick Mclaughlin <patrick@wukelalaw.com>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Vicky Ware <vmware@williamsattys.com>; wdavidson@dml-law.com; gwc@buyckfirm.com; george@buyckfirm.com; cbhutto@williamsattys.com
Subject: Re: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

That is not a problem. Thank you

Sent from my iPhone

On Dec 19, 2022, at 3:43 PM, Andrew Lindemann <Andrew@ldlawsc.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
Jewell:

In follow up to the below email, I had planned to provide Judge Murphy with my objections and comments to the proposed order by today's deadline. I am in a bit of a bind with a federal court filing that is also due today. Would Judge Murphy be willing to give me until tomorrow to send her my objections and comments to the proposed order? That courtesy would be greatly appreciated.

Thanks.

Andrew

Andrew F. Lindemann
Lindemann & Davis, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldlawsc.com<mailto:andrew@ldlawsc.com>

From: Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>
Sent: Thursday, December 8, 2022 9:39 AM
To: Andrew Lindemann <Andrew@ldlawsc.com>; 'Mira Watson' <mwatson@wukelalaw.com>
Cc: Patrick Mclaughlin <patrick@wukelalaw.com>; Murphy, Maite <mmurphyj@sccourts.org>; Murphy, Maite

Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Vicky Ware <vmware@williamsattys.com>; wdavidson@dml-law.com; gwc@buyckfirm.com; george@buyckfirm.com; cbhutto@williamsattys.com
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Good Morning Counsel,

Than you for your proposed order. Your Honor would allow 7-10 days to review this proposed Order before we review. Please let me know if you have any objections.

Thank you,
Jewell Gearding, Esq.

From: Andrew Lindemann <Andrew@ldlawsc.com<mailto:Andrew@ldlawsc.com>>
Sent: Thursday, December 8, 2022 7:50 AM
To: 'Mira Watson' <mwatson@wukelalaw.com<mailto:mwatson@wukelalaw.com>>; Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org<mailto:mmurphylc@sccourts.org>>
Cc: Patrick Mclaughlin <patrick@wukelalaw.com<mailto:patrick@wukelalaw.com>>; Murphy, Maite <mmurphyj@sccourts.org<mailto:mmurphyj@sccourts.org>>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org<mailto:mmurphysc@sccourts.org>>; Vicky Ware <vmware@williamsattys.com<mailto:vmware@williamsattys.com>>; wdavidson@dml-law.com<mailto:wdavidson@dml-law.com>; gwc@buyckfirm.com<mailto:gwc@buyckfirm.com>; george@buyckfirm.com<mailto:george@buyckfirm.com>; cbhutto@williamsattys.com<mailto:cbhutto@williamsattys.com>
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
Jewell:

I would request that Judge Murphy provide me time to review and comment on this proposed order. I was not provided a draft prior to the submission to the Court. I am in Richmond this morning for an oral argument before the Fourth Circuit and have not had an opportunity as yet to read the proposed order. I would respectfully ask for 7-10 days to review and provide comments per Rule 5(b) and the comments thereto.

Thank you.

Andrew Lindemann

From: Mira Watson <mwatson@wukelalaw.com<mailto:mwatson@wukelalaw.com>>
Sent: Wednesday, December 7, 2022 4:33 PM
To: mmurphylc@sccourts.org<mailto:mmurphylc@sccourts.org>
Cc: Patrick Mclaughlin <patrick@wukelalaw.com<mailto:patrick@wukelalaw.com>>; Andrew Lindemann <Andrew@ldlawsc.com<mailto:Andrew@ldlawsc.com>>; mmurphyj@sccourts.org<mailto:mmurphyj@sccourts.org>; mmurphysc@sccourts.org<mailto:mmurphysc@sccourts.org>; Vicky Ware <vmware@williamsattys.com<mailto:vmware@williamsattys.com>>; wdavidson@dml-law.com<mailto:wdavidson@dml-law.com>; gwc@buyckfirm.com<mailto:gwc@buyckfirm.com>; george@buyckfirm.com<mailto:george@buyckfirm.com>; cbhutto@williamsattys.com<mailto:cbhutto@williamsattys.com>
Subject: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Dear Jewell:

Attached plead find Plaintiff's proposed order and attorney fee affidavit pursuant to your November 22, 2022 email.

Mr. McLaughlin instructed me to just submit the order via email in word format, for your convenience in making

whatever edits Judge Murphy may wish to make. As such, we will not e-file the proposed order unless we receive instruction to do so.

Please let me know if you have any issues opening the files.

Sincerely,

Mira Watson
Legal Assistant to Patrick J. McLaughlin

Wukela Law Firm
403 Second Loop Road
Post Office Box 13057
Florence, South Carolina 29504
(843) 669-5634 Telephone
(843) 669-5150 Fax

From: Murphy, Maite Law Clerk (Jewell Gearding)
To: Andrew Lindemann; Murphy, Maite; Murphy, Maite Secretary (Robin Dukes); Vicky Ware
Cc: wdavidson@dml-law.com; gwc@buyckfirm.com; george@buyckfirm.com; Patrick Mclaughlin; Brad Hutto
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486
Date: Tuesday, November 22, 2022 9:01:12 AM

Good Morning Counsel;

Your Honor has requested Mr. McLaughlin to prepare a proposed Order granting the relief requested in your motion to compel. Your Honor finds that the Requests for Admission No. 1 and 2 are admitted for the reasons as outlined in the Plaintiff's memorandum and presentation during the hearing. The Plaintiff's motion that the responses be published as evidence to a jury will be left to the discretion of the trial Judge. Further, please submit and affidavit of attorney's fees and costs incurred in the preparation of this motion.

Thank you,
Jewell M. Gearding Esq.
Law Clerk for the Honorable Maite Murphy
First Judicial Circuit
5200 East Jim Bilton Boulevard
St. George, South Carolina 29477

From: Andrew Lindemann <Andrew@ldlawsc.com>
Sent: Thursday, November 10, 2022 4:20 PM
To: Murphy, Maite <mmurphyj@sccourts.org>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>; Vicky Ware <vmware@williamsattys.com>
Cc: wdavidson@dml-law.com; gwc@buyckfirm.com; george@buyckfirm.com; patrick@wukelalaw.com; Brad Hutto <cbhutto@williamsattys.com>
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Judge Murphy:

I apologize for not responding sooner. I had a date certain trial scheduled for this week in Georgetown which had occupied my attention last week (that is until that term of court was abruptly cancelled). At any rate, I have had the opportunity to discuss with my client your disclosure at last week's motion hearing about Mr. Pendarvis' wife formerly being an intern for you in private practice. To the extent that would give rise to a conflict, the Defendant SLED waives that conflict and has no objection to you proceeding to decide the motion that is under advisement.

Thank you for the opportunity for me to consult with the client on that issue. Let me know if there are any questions or if anything further is needed from me.

Andrew

Andrew F. Lindemann
Lindemann & Davis, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldlawsc.com

From: Murphy, Maite <mmurphyj@sccourts.org>
Sent: Thursday, November 10, 2022 10:25 AM
To: Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>; Vicky Ware <vmware@williamsattys.com>
Cc: wdavidson@dml-law.com; Andrew Lindemann <Andrew@ldlawsc.com>; gwc@buyckfirm.com; george@buyckfirm.com; patrick@wukelalaw.com; Brad Hutto <cbhutto@williamsattys.com>
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Good morning. Yes, that is correct. I am awaiting Mr. Lindeman to inform me as to his client's position. Mr. Lindeman, please advise at your earliest convenience. Thank you.

From: Murphy, Maite Secretary (Robin Dukes)
Sent: Thursday, November 10, 2022 10:08 AM
To: Murphy, Maite <mmurphyj@sccourts.org>; Murphy, Maite Law Clerk (Jewell Gearding) <mmurphylc@sccourts.org>
Subject: FW: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

From: Vicky Ware <vmware@williamsattys.com>
Sent: Wednesday, November 9, 2022 5:46 PM
To: Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>
Cc: wdavidson@dml-law.com; andrew@ldlawsc.com; gwc@buyckfirm.com; george@buyckfirm.com; patrick@wukelalaw.com; Brad Hutto <cbhutto@williamsattys.com>
Subject: RE: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486

Dear Judge Murphy: As you will recall, you heard discovery motions in this matter on Monday October 31st. At that time, you disclosed that Plaintiff's wife had at one time interned in your law office years ago. Mr. Lindeman indicated that he would, after talking to his client, let the court know if this posed a problem with your ruling on this motion. Since we have not heard from him, we are assuming that you have the motions under advisement and will make your ruling in due course.
Sincerely,
Brad Hutto

WILLIAMS & WILLIAMS
ATTORNEYS AT LAW

Vicky Ware Lee
Paralegal to C. Bradley Hutto

WILLIAMS & WILLIAMS
1281 Russell Street
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vicky@williamsattys.com

(w) 803.534.5218
(d) 803.937.1134
(f) 803.536-6844

Patrick Mclaughlin

From: Mira Watson
Sent: Wednesday, December 7, 2022 4:33 PM
To: mmurphylc@sccourts.org
Cc: Patrick Mclaughlin; Andrew Lindemann; mmurphyj@sccourts.org; mmurphysc@sccourts.org; Vicky Ware; wdavidson@dml-law.com; gwc@buyckfirm.com; george@buyckfirm.com; cbhutto@williamsattys.com
Subject: Pendarvis v. L.C. Knight, et al., C/A No.: 2021-CP-18-1486
Attachments: 2022.12.07 - Proposed Order for Plaintiff Motions v KEEL - FINAL.docx; 2022.12.07 - Affidavit of Attorneys Fees & Costs - Pendarvis.pdf

Dear Jewell:

Attached plead find Plaintiff's proposed order and attorney fee affidavit pursuant to your November 22, 2022 email.

Mr. McLaughlin instructed me to just submit the order via email in word format, for your convenience in making whatever edits Judge Murphy may wish to make. As such, we will not e-file the proposed order unless we receive instruction to do so.

Please let me know if you have any issues opening the files.

Sincerely,

Mira Watson
Legal Assistant to Patrick J. McLaughlin

Wukela Law Firm
403 Second Loop Road
Post Office Box 13057
Florence, South Carolina 29504
(843) 669-5634 Telephone
(843) 669-5150 Fax

Exhibit 7

In The Matter Of:

Freddie E. Owens, et al v Bryan P. Stirling, et al
Transcript of Audio File Appeal/Cross-Appeal Before

The South Carolina Supreme Court
January 5, 2023

Kathleen Owens-Hays Court Reporting
(843) 260-7693
Email: Kmohcr@outlook.com

Original File Transcript of Audio Recording_Oral Argument Before SC Supreme Court_010523.txt

Min-U-Script® with Word Index

IN RE:
FREDDIE E. OWENS, ET AL. V. BRYAN P. STIRLING, ET AL.
CASE NO.: 2022-00120

TRANSCRIPT OF AUDIO FILE
APPEAL/CROSS-APPEAL BEFORE
THE SOUTH CAROLINA SUPREME COURT

TRANSCRIBED BY: KATHY OWENS-HAYS, COURT REPORTER
PROCEEDING DATE: JANUARY 5, 2023

KATHLEEN OWENS-HAYS COURT REPORTING
Phone (843) 260-7693 Email: Kmohcr@outlook.com

it -- is that a non-delegation problem, which we were talking about, through the end of their argument. So --

JUSTICE KITTREDGE: Let me stop you there, and just tell you there's a -- in my judgment, sir, a problem that we see in cases that don't reach this magnitude. In nonjury matters, there's a request, as happened here, for orders to be drafted by each side. I don't know for a fact, but I gather, from the order signed by the judge, the judge signed the order submitted by your side. And in that regard, what we see, unfortunately, has surfaced in this case. For example, the trial judge found that the State presented no evidence -- quote -- "no evidence" that these methods of execution were painless, or cause immediate death. That's just an absolute false statement, and the order is riddled with those hyperbolic, false statements, as if they presented nothing. It might have been legitimate to say differing opinions were issued -- I found this more credible, for this particular reason. But how does that impact the standard of review, when we've got an obviously-flawed order that was signed, that doesn't match the record?

MR. BLUME: Well, I would disagree that, in many