

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Honorable Milton G. Kimpson, Administrative Law Judge

Appellate Case No. 2023-000441

Stephen Mueller Appellant,

v.

South Carolina Department of Health and Environmental Control and
Carla Varn DuPre and Jasper B. Varn, III, Respondents.

**RESPONDENTS’ JOINT RETURN TO APPELLANT’S
MOTION FOR SUMMARY JUDGMENT**

The Respondents jointly submit this Return to Appellant’s *Motion for Summary Judgment*.

Appellant asserts that he is entitled to “summary judgement” because the Department “has not filed a Record on Appeal in a timely manner and has not produced any evidence in fact or law supporting their position.”

On November 1, 2023, Appellant previously filed a virtually-identical “summary judgment motion” asserting "there is no fact or matter of law to be argued at trial." Putting aside the Appellant’s conflation of the trial and appellate process, on December 7, 2023 this Court summarily denied Appellant’s November 1, 2023 motion. Appellant once again trots out this same

specious argument and additionally contends that Rule 260(a), SCACR imposes a duty on the Department to file a Record on Appeal. This assertion is at odds with the plain language of Rule 210(a), SCACR which requires the Appellant, not the Respondent to file the Record on Appeal. Per Rule 209(a), SCACR, Respondent's jointly filed a Designation of Matter and Initial Brief on October 2, 2023. Then on November 1, 2023, because of concern for Appellant's demonstrated unfamiliarity with the South Carolina Rules of Appellate Procedure and the appellate process generally,¹ counsel for Respondents Carla V. DuPre and Jasper B. Varn, III filed a 306-page Record on Appeal to ensure that the documents identified in the Respondents' Joint Designation of Matter actually made it into the Record on Appeal. Respondents' concerns that Appellant would submit a deficient Record on Appeal were validated when Appellant submitted a shorter Record on Appeal (288 pages) that obviously did not include all of the documents identified in the Respondents' Joint Designation of Matter.

While Rule 210(a), SCACR does not require Respondents to file the Record on Appeal, the prior joint filings by all three Respondents plainly demonstrate the intent that all filings be deemed as joint filings. If this Court believes that the Respondents' November 1, 2023 Record on Appeal should properly reflect all three Respondents in the caption, the remedy should be to re-

¹ For example, the Appellant included a photo in his Record on Appeal which he represented to the undersigned counsel on January 2, 2024 was taken in October 2023 (labeled as Exhibit 100A in the ROA). This photo was improperly included in the Record on Appeal because it was obviously not part of the November 8, 2021 trial record. Again, on January 4, 2023 Appellant improperly submitted two more photos to this Court in his third "Summary Judgment Motion." He asserts in his motion that these two photos were taken on January 2, 2024 (more than two years after the ALC trial). He also asserts in his motion that "[a] costly trial can be avoided" if the Court of Appeals will revoke the critical area permit issued by the Department. Appellant continues this conflation of the trial and appellate process when he asks the Court of Appeals for guidance as to whether he should depose three Department employees and Bill Eiser before or after the "trial" (see Appellant's October 27, 2023 letter). Obviously, the time for deposing these individuals has long ago expired.

caption the first page, not revoke the Department's critical area permit as Appellant requests in his Summary Judgment Motion.

For the foregoing reasons, the Appellant's Motion should be denied.

Respectfully submitted,

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Attorneys for Respondents
Carla V. DuPre and Jasper B. Varn, III

January 17, 2024
Charleston, South Carolina

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SC Court of Appeals

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served RESPONDENTS' JOINT RETURN TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT upon all attorneys of record via U.S. Mail and electronic delivery to the email addresses of record below:

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January 17, 2024

Charleston, South Carolina



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Jan 17 2024

SC Court of Appeals

January 17, 2024

Via email to ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RE: Stephen Mueller v. SCDHEC and Carla Varn DuPre and Jasper B. Varn, III
Appellate Case No.: 2023-000441

Dear Ms. Kitchings:

Enclosed please find for filing Respondents' Joint Return to Mueller's Motion for Summary Judgment in the above-referenced matter. By copy hereof, we are serving all parties of record as reflected on the Certificate of Service.

Very truly yours,

Bradley D. Churdar

Bradley D. Churdar
Associate Chief Counsel

Enclosures

BDC/jhd

cc: Stephen Mueller
Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire