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Jan 19 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-000757
Civil Action 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 the Appellant Appellant.

MOTION TO FILE OUT OF TIME OR EXTENSION OF TIME

The Respondent, John Trenton Pendarvis, moves this Court, pursuant to Rule 240 SCACR, for leave of the Court to accept his motion to tax costs on appeal in the amount of \$2,868.75 against Appellant, Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division out of time or for an extension of time, if the Court finds that the motion filed January 8, 2024 was not timely filed.

This motion is based on the grounds as set forth in the Reply in Support of Motion for Costs on Appeal that is being filed contemporaneously with this motion, as well the accompanying affidavit exhibit. Those grounds are as follows:

As documented in the accompanying affidavit (**Exhibit 1**) to this motion, Respondent did not receive notice that remittitur had been issued by this Court. It was not until Respondent's counsel logged in to the public index to download a copy of the December 27, 2023 filed Amended Order on discovery, believed to have occurred on January 2, 2024, that Respondent learned remittitur had been issued by this Court. The first notice of the remittitur Respondent had, came from discovering that a remittitur issued by this Court dated December 14, 2023 had been filed with the Dorchester County Common Pleas Court on December 27, 2023 (**Attachment A to Exhibit 1**). As documented in the affidavit, prior to seeing that filing on the public index, Respondent's counsel had received no notification either electronically or hard copy of the December 14, 2023 remittitur.

Respondent filed the current motion for costs within six (6) days of learning of the issuance of the remittitur on January 2, 2024.

This Court has previously found that a request by a party for costs on appeal pursuant to Rule 222(d) SCACR is not properly before the Court if it has been made prior to the issuance of the remittitur. *See Prince v. Beaufort Mem. Hosp.*, 392 S.C. 599, 611 (Ct. App. 2011) (declining to address appellant's "request for his costs on appeal as premature," because remittitur yet to be issued).

Rule 263(b) SCACR states that "the time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof..."

Respondent respectfully argues that it would be unfair and unjust to find that a time deadline began to run on his rights prior to Respondent being provided notice that the triggering event for accrual of time had commenced. The record reflects that Respondent promptly acted on his rights as soon as he received notice and had good cause for not acting sooner.

Respectfully submitted,

WUKELA LAW FIRM

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Attorneys for Respondent

January 19, 2024
Florence, South Carolina

STATE OF SOUTH CAROLINA	
COUNTY OF FLORENCE	
	AFFIDAVIT

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 and recollection.
2. That I am counsel for John Trenton Pendarvis on several civil cases arising from the seizure and destruction of his hemp crop that occurred back in September 2019.
3. That representation has included responding to an appeal filed by Appellant/Defendant Mark Keel, in his official capacity, from a February 28, 2023 trial court order sanctioning discovery conduct. That appeal was Appellate Case No. 2023-000757 in the South Carolina Court of Appeals, and subsequently Appellate Case No. 2023-001533 at the South Carolina Supreme Court upon Appellant/Defendant Keel's petition for writ of certiorari.
4. Via email correspondence dated December 13, 2023 from Ashli Thompson, Senior Case Management Specialist with the South Carolina Supreme Court, sent to all counsel on the pending case and the trial court, I received notice of the Supreme Court's December 13, 2023 Order denying the Appellant/Defendant Keel's petition for certiorari.



5. Via email correspondence from the Hon. Maite Murphy later that same day, we were instructed by the trial court to submit, via e-filing, an amended Discovery Order pursuant to the instructions in the attached Supreme Court Order.
6. Myself and Appellant/Defendant counsel, Daniel C. Plyler, proceeded to exchange several emails over the next several days regarding a proposed order to submit, culminating with Attorney Plyler's office e-filing the amended discovery order the parties agreed to submit on December 18, 2023 at 4:35 p.m.
7. That on December 27, 2023 at 3:54 p.m., I received notice of electronic filing (NEF) that Judge Murphy had filed an amended order.
8. Upon receiving that December 27th NEF about Judge Murphy having filed the amended order, I logged into the public index to pull up the order and see if it was the order we had submitted or if there had been any changes. I recall quickly checking the filed order online just to see if Judge Murphy made any changes to the order we had submitted and seeing no changes, logging out. To the best of recollection, there were no subsequent filings after the Order at the time I logged into the public index, or I would have checked them.
9. According to the public index, at 4:39 pm on December 27, 2023, the "Remittitur from Court of Appeals" was filed. That remittitur is dated December 14, 2023 and is addressed from the Court of Appeals Chief Deputy Clerk to the Dorchester County Clerk of Court, with all attorneys, including myself, listed as being courtesy copied. (**Attachment A** to this Affidavit).
10. I have reviewed my entire email application (inbox, deleted files, client files, junk, etc.) and conducted searches for emails containing "Pendarvis," "courtesy NEF,"



“Court of Appeals,” “Remittitur,” etc. and been unable to locate any email wherein I ever received a copy of the remittitur, notice that it had been issued or notice that it had been filed.

11. I was not even aware that there could be any kind of filing within the South Carolina Court Electronic Filing System and parties associated with the case **not** receive a NEF of the filing, but as this screenshot from my e-filing account’s notifications page shows, the only NEF issued by the e-filing system for any of my cases on December 27, 2023 was the NEF for the filing of Judge Murphy’s Amended Order:

Documents	Case Name	Case No.	Court	Location	Date
Documents: Decline to Sign Filing/Other	Filing/Other was filed by or on behalf of Jvonndra Brooks Creech	Renee S. Beach , plaintiff, et al VS Gregory H. Parker, Inc. , defendant, et al	2019CP2500111	Common Pleas	Hampton 01-04-2024
Documents: Notice/Notice of Appearance	Notice/Notice of Appearance was filed by or on behalf of John Patrick Riordan	Cara King , plaintiff, et al VS Spartanburg School District Seven , defendant, et al	2023CP4204441	Common Pleas	Spartanburg 01-04-2024
Documents: Answer/Answer	Notice/Notice of Appearance was filed by or on behalf of Charles Franklin Turner, Jr.	Cara King , plaintiff, et al VS Spartanburg School District Seven , defendant, et al	2023CP4204441	Common Pleas	Spartanburg 01-04-2024
Documents: Service/Affidavit Of Service	Service/Affidavit Of Service was filed by or on behalf of Patrick James McLaughlin	Jacqueline Patricia Sellers VS City Of Dillon , defendant, et al	2022CP1700131	Common Pleas	Dillon 01-02-2024
Documents: Service/Certificate Of Service	Service/Certificate Of Service was filed by or on behalf of Patrick James McLaughlin	Jacqueline Patricia Sellers VS City Of Dillon , defendant, et al	2022CP1700131	Common Pleas	Dillon 01-02-2024
Documents: Order/Dismissal as to Defendants Order/Dismissal	Order/Dismissal was filed by or on behalf of Eugene Griffith	Cassiopea Rhoads VS Southern Health Partners Inc , defendant, et al	2020CP0202238	Common Pleas	Aiken 12-28-2023
Documents: Order/Compel Order/Compel	Order/Compel was filed by or on behalf of Haite Murphy	John Trenton Pendarvis VS Sheriff Dorchester County , defendant, et al	2021CP1801486	Common Pleas	Dorchester 12-27-2023
Documents: Answer/Answer To Amended Complaint	Answer/Answer To Amended Complaint was filed by or on behalf of Michael Brian Wren	Jacqueline Patricia Sellers VS City Of Dillon , defendant, et al	2022CP1700131	Common Pleas	Dillon 12-20-2023

12. Additionally, a search of our hard copy file here in the office has not found any actual hard copy of the December 14, 2023 remittitur received via USPS.

13. It was not until I logged in to the public index **after** December 27th to download the Order to save in my digital files, that I saw the December 27th 4:39 p.m. filing of the remittitur. The saved digital copy of that order in my digital case files shows that .pdf was created January 2, 2024.

14. My co-counsel, Attorney Brad Hutto, had protection during this time, as he was out of the country and his office was closed from Christmas through the New Year. However, Attorney Hutto’s staff has similarly searched their digital records and found no other emails or NEFs other than those I received and described above.

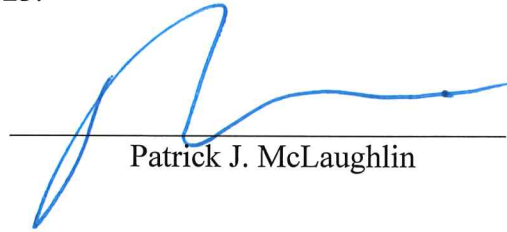
15. In sum, the first notice Respondent/Plaintiff Pendarvis had that a remittitur had actually been issued was **after** December 27, 2023.

FURTHER AFFIANT SAYETH NOT.

Subscribed and sworn to before me
this 18th day of January 2024.

Margaret L. Day
Notary Public for the State of

My commission expires: 3-4-2032



Patrick J. McLaughlin

ATTACHMENT A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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December 14, 2023

The Honorable Robert J. Harte
PO Box 583
Aiken SC 29802

REMITTITUR

Re: John Trenton Pendarvis v. L.C. Knight
Lower Court Case No. 2021CP1801486
Appellate Case No. 2023-000757

FILED-RECORDED

12-27-2023
Cheryl Graham
Clerk of Court
Dorchester County

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Catherine Harrison, Deputy

CLERK

Enclosure

cc: Patrick James McLaughlin, Esquire
C. Bradley Hutto, Esquire
Daniel Clifton Plyler, Esquire

**Austin Tyler Reed, Esquire
Frederick Newman Hanna, Jr., Esquire**

The South Carolina Court of Appeals

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 State 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 State Law Enforcement Division, is the Appellant.

Appellate Case No. 2023-000757

FILED-RECORDED

12-27-2023
Cheryl Graham
Clerk of Court
Dorchester County

ORDER

This appeal arises out of an order of the circuit court granting Respondent's motion to compel discovery and determine the sufficiency of Appellant's responses to requests for admission. 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."); *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.



FOR THE COURT

Columbia, South Carolina

cc:
Andrew F. Lindemann, Esquire
Patrick James McLaughlin, Esquire
C. Bradley Hutto, Esquire

FILED
Jul 10 2023
