

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No. 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall Respondents,

v.

William Bertram von Herrmann and The von Herrmann Law Firm. Appellants.

**RESPONDENTS’ REPLY TO APPELLANTS’
MEMORANDUM IN OPPOSITION TO
RESPONDENTS’ MOTION TO DISMISS APPEAL**

Respondents submit this Reply to make a few discrete points in response to Appellants’ Memorandum in Opposition to Respondents’ Motion to Dismiss Appeal. For the reasons detailed below and in Respondents’ Motion, Appellants’ interlocutory appeal should be dismissed, and the matter allowed to proceed through the conclusion of pretrial discovery in the trial court.

In their Opposition, Appellants mischaracterize the underlying litigation by asserting that this case involves “allegedly intercepted [electronic] messages.” (Appellants’ Memo. in Opp., at 8.) Contrary to Appellants’ representations, this issue was fully resolved in Respondents’ favor by this Court.

In the related *Buchannon* appeal, discussed in Respondents’ Motion to Dismiss, this Court ruled that Justin Fulmer’s “repeated use” of Respondent Anna Coggeshall’s iWatch “to view her text messages amounted to interceptions under the [South Carolina] Homeland Security Act.”

(2022 Buchannon Order, at 5.) This is an established fact for purposes of the present litigation. Stated differently, the 2022 Buchannon Order constitutes the law of the case and is binding on Appellants, as Mr. Fulmer's legal counsel.

"It is well settled in this jurisdiction that a decision of this court on a former appeal is the law of the case. The questions therein decided are res judicata and this court will not on subsequent appeal review its former decision." *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 357, 166 S.E.2d 297, 299 (1969); *see also Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015), *cert. denied*, 2016 S.C. LEXIS 221 (Aug. 4, 2016). Res judicata applies here because the *Buchannon* litigation involved the same parties (*i.e.*, Respondents) or privies (*i.e.*, Mr. Fulmer's counsel, Appellants William Bertram von Herrmann and The von Herrmann Law Firm) and the same issues (*i.e.*, intercepted electronic communications in violation of the South Carolina Homeland Security Act). *See Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 507, 812 S.E.2d 438, 442 (Ct. App. 2018) ("In order for res judicata to apply, the parties -- or their privies -- and subject matter must be identical, and the prior suit adjudicated the issue").

Appellants are barred by res judicata from revisiting the issue of whether electronic communications from Respondent Anna Coggeshall's iWatch were wrongly intercepted in violation of the South Carolina Homeland Security Act. *See id.*; *see also Huggins*, 252 S.C. at 357, 166 S.E.2d at 299; *Flexon*, 413 S.C. at 573, 776 S.E.2d at 404. This Court previously answered this question in the affirmative. Thus, Respondents' assertion that Anna's electronic text messages were illegally intercepted in violation of the South Carolina Homeland Security Act is not merely an "allegation" but an established fact. The sole remaining question is whether Appellants von Herrmann and his law firm likewise violated the South Carolina Homeland

Security Act when they knowingly used and disclosed the illegally intercepted electronic communications in their pursuit of Mr. Fulmer's case against Respondents.

Notably, Respondents never contended that Appellants von Herrmann and his law firm personally intercepted any electronic communications from Respondents. Rather, they allege that Appellants knowingly used and disclosed such communications. The knowing use and disclosure of a third-party's electronic communications violates the express provisions of the South Carolina Homeland Security Act to the same degree as the actual interception of electronic communications. *See* S.C. Code Ann. § 17-30-20(3), (4).

Moreover, as a matter of policy, an interlocutory appeal is disfavored because it promotes "[p]iecemeal appeals." *State v. Wilson*, 387 S.C. 597, 601, 693 S.E.2d 923, 925 (2010). "Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). Thus, the provisions of S.C. Code § 14-3-330 must be "narrowly construed, and the immediate appeal of orders issued before or during trial generally [should not be] . . . permitted." *Wilson*, 387 S.C. at 601, 693 S.E.2d at 925; *see also Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989).

In their Opposition, Appellants invoke highly technical arguments as a means of deflection. However, this case is far more straightforward than Appellants suggest. It is undisputed that Appellants used and disclosed Respondent Anna Coggeshall's electronic communications from her iWatch during the course of their representation of Mr. Fulmer. If Appellants did so knowingly, they are liable to Respondents for violating the South Carolina Homeland Security Act. *See* S.C. Code Ann. § 17-30-20(3), (4). As a matter of policy, the Court should not allow Appellants to needlessly delay resolution of this issue and add to the cost of litigation through the piecemeal approach of an interlocutory appeal. *See Chaplain v. Chaplain*, 54 Va. App. 762, 770, 682 S.E.2d

108, 112 (2009) (“By their nature, interlocutory appeals are disruptive, time-consuming, and expensive”). This is particularly so given the fact that the interception of the electronic communications as well as their use and disclosure by Appellants in the litigation brought by Mr. Fulmer has already been definitively determined.

Respectfully submitted:

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Marion, South Carolina

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SC Court of Appeals

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APPEAL FROM HORRY COUNTY
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Kristi F. Curtis, Circuit Court Judge
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Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall.....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm.....Appellants.

PROOF OF SERVICE

I certify that I have served *Respondent's Reply to the Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss Appeal*, upon the parties below by electronic mail, addressed as follows:

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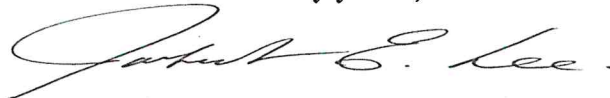
SC Court of Appeals

RE: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram
von Herrmann and The Von Herrmann Law Firm
Appeal case No.: 2024-000786

Dear Ms. Kitchings:

Enclosed find Respondents, Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall's Reply to the Appellants' Memorandum in Opposition to the Respondents' Motion to Dismiss Appeal in the above-referenced case, Proof of Service, and Respondents' service email and letter to Appellants counsel.

Sincerely yours,



ROBERT E. LEE

REL:bss

Enclosures: *as stated above*

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