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Jun 17 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Debra R. McCaslin

Case No. 2023-CP-32-00881

App. Case No. 24-315

In the Matter of Naomi Hyler Collie.

C.E. Holmes,

Appellant,

v.

C.N. Collie,

Respondent.

MOTION FOR RECONSIDERATION AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,
RULES 221 AND 240, SCACR, PETITION FOR REHEARING EN BANC AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

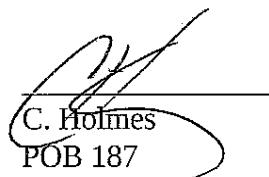
The appellant timely motions for reconsideration of the clerk's June 7, 2024, ministerial letter in violation of the SCACR containing overreaching attempts to dismiss meritorious appeals timely served and filed. It is respectfully submitted the clerk provides no authority cited in support and none is found. On the other hand, there is an abundant body of law mandating due process including but not limited to, meaningful judicial review at a meaningful time and facilitation of appeals with even-handedness, transparency, and fundamental fairness. By analogy, Toal's *Appellate Practice in South Carolina* provides, "(I)f a party appeals a form order that provides a more complete order is to follow, **the prudent practice may be to serve and file a second notice of appeal** when the complete order is issued to preempt any argument that the appellate court lacks jurisdiction to review the complete order. No additional filing fee would be necessary in this situation." Toal *et al.*, *Appellate Practice in South Carolina* (2002), Second Ed., p. 121 (emphasis supplied). Moreover, if no appeal is taken until final judgment is entered, the appellate court may then review any intermediate order or decree necessarily affecting the judgment not before appealed from. *See Link v. School Dist. Of Pickens*, 302 S.C. 1, 393 S.E.2d 176 (1990); *SCDOT v. Faulkenbury*, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999); Toal *et al.*, *Appellate Practice in South Carolina* (2002), Second Ed., p. 88. As such, in this case, the later appeal, therefore, includes the earlier appeal. Under the facts, there is no SCACR Rule that requires a citizen to motion the Court of Appeals in order to file appeal from the court below and if there were, it could not and would not pass constitutional muster. Significantly and materially, there is no SCACR Rule requiring motion regarding the notice of appeal timely served and filed. To the extent a ministerial government employee in the future could or would attempt overreaching dismissals of meritorious appeals and/or attempt to impermissibly ex parte and/or prejudice the Court through overreaching attempts to dismiss meritorious appeals, the SCACR Rules are designed to foreclose that wrongdoing. *See Pillay v. INS*, 45 F.3d 14 (2nd Cir. 1995). Accordingly, appellant respectfully requests the motions and petition be granted. "The touchstone of due process is protection of the individual against arbitrary

action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

For substantial justice affecting substantial rights, the appellant respectfully requests the motions and petition be granted. In the alternative, consideration of dismissal should be deferred until final briefs and the ROA are completed.

Respectfully submitted,


C. Holmes
POB 187
Sull. Isd., SC 29482-0187
843.883.3010

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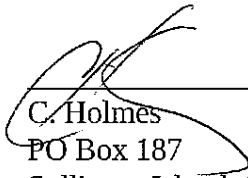
Respondent.

PROOF OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for the respondent by regular first class mail postage pre-paid on this date at this address:

Robin Braithwaite
759 Richland Ave. W
Aiken, SC 29801

Dated 6/17/2024


C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

DURST FAMILY MEDICINE, LLC

(843) 883-3176

(843) 883-3459

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843.883.3010