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Aug 30 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Florence County
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2024-001234

In re: Lorraine Schueler,.....Appellant,

Noah Veon, on behalf of himself and all others similarly situated,.....Plaintiff,

v.

Richard James Schueler a/k/a Richard Heart,.....Defendant.

Motion to Transfer or Certify from the Court of Appeals

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Attorneys for Appellant

Appellant Lorraine M. Schueler (“Mrs. Schueler”) moves under Rule 204(b), SCACR, to certify this action for review before determination by the Court of Appeals. Appellant filed her Notice of Appeal with the Court of Appeals. A copy of that Notice is attached as Exhibit 1. This Court has discretion to certify any case pending before the Court of Appeals and transfer the case for review by this Court before it has been determined by the Court of Appeals. *See* Rule 204(b), SCACR.

As discussed below and in Appellant’s Petition for a Writ of Certiorari previously filed, the Court should certify this case for review by this Court because it involves issues of significant public interest and legal principles of major importance, including issues of first impression in South Carolina, including the following:

- (1) The circuit court’s order permits a party to avoid the requirements of the Hague Convention and the recently enacted Rule 4.1, SCRCP. This Court has not had an opportunity to examine Rule 4.1, which applies to service on individuals living in a foreign country and requires service to comply with international agreements, including the Hague Convention.
- (2) The circuit court permitted service through social media through the newly minted Rule 4.1, SCRCP. This Court, not circuit courts on an ad hoc basis, should decide whether the commencement of a lawsuit can be accomplished through service on social media, and if so, should establish the proper framework to protect the significant due process concerns present.
- (3) Plaintiff never sought permission to file an anonymous complaint, and the circuit court’s decision to permit Plaintiff to amend the caption, without dismissing the complaint or requiring Plaintiff to serve Defendant, violated Rule 10, SCRCP.

(4) The issues on appeal present novel questions of significant public interest involving the improper abuse of judicial subpoena power against nonparties in cases that have never been properly commenced. Plaintiff's subpoenas are abusive and seek records not remotely relevant to a resolution of the claims in the lawsuit he has never properly commenced.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A thorough recitation of the factual background and procedural history of this matter is provided in the Petition for Writ of Certiorari recently filed by Mrs. Schueler. The below provides a succinct summary for the convenience of the Court.

The circuit court's orders on appeal relate to a putative class action lawsuit involving owners of HEX tokens, which is a form of cryptocurrency. Plaintiff filed an anonymous complaint based on the theory that HEX tokens are a security, but he never properly served the defendant, who apparently lives in Finland. The circuit court sanctioned service by social media in light of Rule 4.1, SCRCF, which in effect eviscerated the Hague Convention, a treaty of the United States. Defendant never appeared, ostensibly because he was never properly served, and he then was placed in default.

Unopposed in his lawsuit that has never been properly commenced, Plaintiff began an invasive discovery campaign by issuing subpoenas without the authority of a validly commenced case, targeting third parties for sensitive banking and other private financial data. This abusive discovery process resulted in one subpoena recipient being thrown in jail for three days, all for a deposition that was noticed in an invalid case. Plaintiff also recently issued subpoenas to Mrs. Schueler's own lawyers and their firms, seeking privileged communications and work-product.

Mrs. Schueler challenged Plaintiff's abusive discovery campaign, the authority to issue the subpoenas, and the legality of the lawsuit itself in a motion for a protective order. The circuit court

largely denied that motion; and Mrs. Schueler filed a motion to reconsider and a Rule 60(b) motion based on newly discovery evidence that the Securities and Exchange Commission was able to locate the Defendant pursuant to the federal counterpart to South Carolina’s Rule 4.1 and the Hague Convention. The circuit court denied those two motions.

Mrs. Schueler then filed and served a Notice of Appeal, and the Court of Appeals responded by directing the parties to brief whether the circuit court’s orders are immediately appealable. Mrs. Schueler is currently briefing the appealability question, where she is the only person able to challenge Plaintiff’s conduct in a case where Defendant has not appeared. Because of the abusive nature of Plaintiff’s discovery campaign, and the novel and significant public interests at stake, Mrs. Schueler filed a Petition for Writ of Certiorari under Rule 245(b), SCACR, seeking this Court’s review. Mrs. Schueler now asks this Court to certify this case to consider the merits of the significant issues at stake in a single proceeding.

ARGUMENT

Transfer of a case to the South Carolina Supreme Court is “normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b), SCACR. This proceeding involves such issues and legal principles. As explained more fully in Mrs. Schueler’s Petition for Writ of Certiorari, this case implicates the Supremacy Clause provision that our courts enforce the requirements of international treaties like the Hague Convention and the authority to issue subpoenas and direct South Carolina residents to comply under threat of jail—which morphed from threat to reality by actual jail time in this case—in a lawsuit that, under the law, does not properly exist.

On July 31, 2024, the Court of Appeals directed the parties to brief within ten days the appealability question. Mrs. Schueler believes the circuit court’s orders are immediately

appealable. In the event the orders are found not to be immediately appealable, Mrs. Schuler has filed a Petition for a Writ of Certiorari, which only this Court can grant. As the Petition explains, this case presents exceptional circumstances and raises critical issues that both affect the public interest and have a significant impact on the rights of South Carolinians. Therefore, even if the orders are not immediately appealable, the issues warrant review by this Court through a Writ of Certiorari.

Nevertheless, the circuit court's orders below are immediately appealable. While normally "[a]n order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330[]," Mrs. Schueler raises numerous key threshold arguments, which no other party can make and challenge the very existence of the case. *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881–82 (1986). Therefore, the circuit court's orders involve the merits of the action under S.C. Code Ann. § 14-3-330(1).

Further, Mrs. Schueler risks the viability of her arguments on appeal if she waits for a technical, pro-forma contempt order. This Court has previously determined that, when a party suffers adverse discovery rulings, continues along in litigation, and waits for a contempt order, that party waives its right to appeal those discovery orders. *See Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) ("Appellants continued to accept the circuit court's formulation of discovery. Right or wrong, these decisions form the law of the case, and Appellants are bound by them now."). Therefore, the procedural posture of Mrs. Schueler's appeal and the nature of her arguments compel immediate appellate review.

Mrs. Schueler's direct appeal and her Petition for Writ of Certiorari create a situation where the merits may be heard in two forums. In the interest of judicial economy, all the issues—appealability, the writ, and the merits—should be decided by this Court. If this Court determines

that the orders are immediately appealable, review through the Petition for a Writ of Certiorari becomes unnecessary, and the appeal would proceed before this Court. Conversely, if this Court determines that the orders are not immediately appealable, then it must decide whether to review the orders by way of an extraordinary writ. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 380, 381 n.1, 692 S.E.2d 920, 921 (2010) (noting the party challenging the discovery order filed a notice of appeal before the court of appeals and a petition for writ of certiorari before the Supreme Court). Therefore, this Court should certify the appeal under Rule 204, SCACR, so that it can address both appealability and the merits.

CONCLUSION

For the reasons stated above, Mrs. Schueler respectfully requests that the Court grant this motion, certify the case for review by the Supreme Court, and order that jurisdiction over this case be transferred from the Court of Appeals.

Respectfully submitted,

BLUESETIN ATTORNEYS
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/s/ John S. Nichols

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Attorneys for Appellant

Columbia, South Carolina

August 30, 2024

EXHIBIT 1

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Jul 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2022-CP-21-01980

Noah Veon, on Behalf of Himself and
All Others Similarly Situated, Respondent,
v.
Richard James Schueler, Defendant.
In Re: Lorraine Schueler, Appellant.

NOTICE OF APPEAL

Non-party Lorraine Schueler (Appellant) appeals the order of the Honorable Michael G. Nettles dated and filed October 18, 2023, denying a protective order pursuant to Rule 26, SCRCPP, and the order of the Honorable Michael G. Nettles dated and filed July 24, 2024, denying Appellant’s motion to reconsider, alter or amend the order pursuant to Rule 59, SCRCPP, and Appellant’s motion pursuant to Rule 60, SCRCPP. Appellant received written notice of the entry of the order on July 24, 2024.

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Attorneys for Appellant

July 26, 2024

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Noah Veon, on Behalf of Himself and
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v.
Richard James Schueler, Defendant.
In Re: Lorraine Schueler, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal upon Respondents by Respondents' counsel's primary e-mail address listed in the Attorney Information System:

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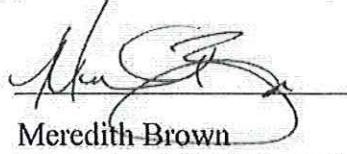
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A handwritten signature in black ink, appearing to read 'Meredith Brown', is written over a horizontal line.

Meredith Brown
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July 26, 2024

Meredith Brown

From: Meredith Brown
Sent: Friday, July 26, 2024 3:53 PM
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Subject: Case No: 2022-CP-21-01980 Veon v Schueler
Attachments: 2024.07.26- Notice of Appeal.pdf

Dear counsel:

Attached please find the Notice of Appeal which is being served upon you in the above matter.

Thank you,
Meredith



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July 26, 2024

The Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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Jul 26 2024

SC Court of Appeals

RE: *Noah Veon, on Behalf of Himself and All Others Similarly Situated, Respondent, v. Richard James Schueler, Defendant.*
In Re: Lorraine Schueler, Appellant.
Case No.: 2022-CP-21-01980

Dear Ms. Kitchings:

I am assisting Appellant's Counsel in the above matter. Please note my appearance on the record.

Enclosed for filing is the Notice of Appeal in the above case. I have also enclosed proof of service of this Notice upon Respondents. Pursuant to paragraph (c) of *Re: Methods of Electronic Filing and Service under Rule 262, SCACR*, Order (S.C. Sup. Ct. filed April 24, 2024), we shall deliver a check for the filing fee to you within five days of this filing.

Thank you for your attention to this matter. Please let me know if you need anything further.

With kind personal regards,

Sincerely,

/s/ John S. Nichols

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In Re: Lorraine Schueler, Appellant,

Noah Veon, on behalf of himself and
all others similarly situated, Plaintiff,

v.

Richard James Schueler a/k/a Richard Heart, Defendant.

PROOF OF SERVICE

I hereby certify that I have served this *Motion to Certify* on all counsel of record to their
primary e-mail addresses listed in the Attorney Information System as follows:

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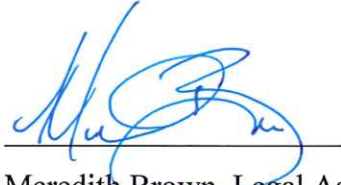
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August 30, 2024

Meredith Brown

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Subject: Veon v Schueller- Case No.: 2022-CP-21-01980
Attachments: 2024.08.30- Motion to Transfer or Certify from the Court of Appeals.pdf

Dear Counsel,

Please find attached the Motion to Transfer or Certify from the Court of Appeals in the above referenced matter.

Thank you,
Meredith



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August 30, 2024

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The Honorable Patricia Howard
Supreme Court of South Carolina Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RE: *In Re: Lorraine Schueler, Appellant*
Noah Veon, on Behalf of Himself and All Others Similarly Situated, Plaintiff v.
Richard James Schueler a/k/a Richard Heart, Defendant.
Case No.: 2022-CP-21-01980
Appellate Case No.: 2024-001234

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With kind personal regards,

Sincerely,

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