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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2021-CP-43-00099

Robert Allen Andrews …… Respondent,

v.

City of Sumter and City of Sumter Police Department ……. Appellants,

---

MOTION TO DISMISS AND

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This motion is made pursuant to Rule 201, 240 and 269 of the South Carolina Appellate Court Rules. Respondent Robert Allen Andrews, moves this Court to dismiss the appeal filed by Appellant on April 2, 2025, as it is a frivolous appeal of an unappealable interlocutory order denying summary judgment and ruling on discovery, taken solely for the purpose of delay. For the reasons stated below, this Court should dismiss this appeal to avoid such delay and impose such sanctions as the Court finds appropriate given the circumstances of the case and to discourage like conduct in the future.

BACKGROUND

Respondent commenced this litigation with the filing of a Summons and Complaint on January 22, 2021. That complaint alleged causes of action for false arrest/imprisonment; malicious

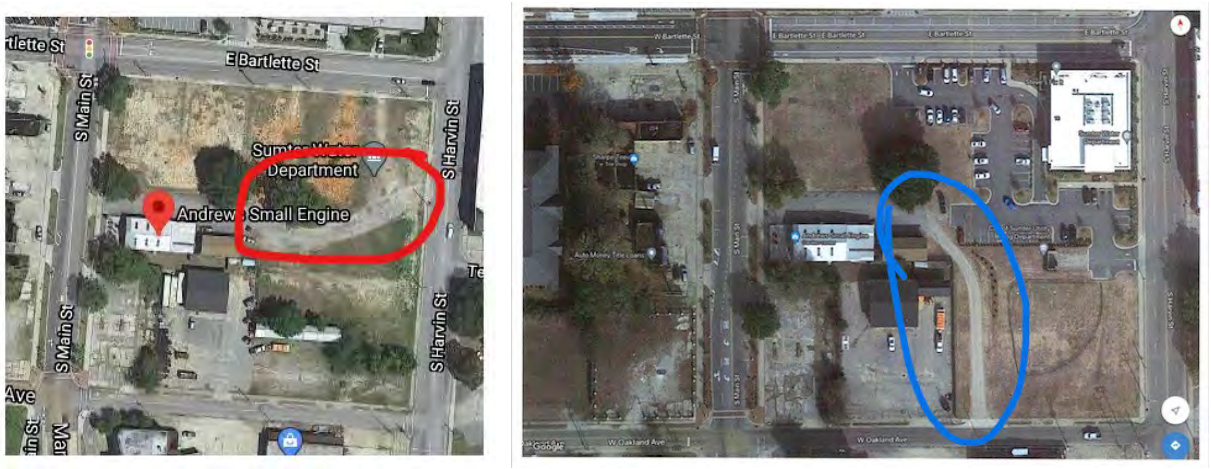
prosecution; abuse of process; defamation; and civil conspiracy causes of action. Appellants filed an *Answer* on February 22, 2021.

Via Order dated June 11, 2021, the Respondent's Malicious Prosecution cause of action was dismissed, while a motion to dismiss the civil conspiracy cause of action was denied.

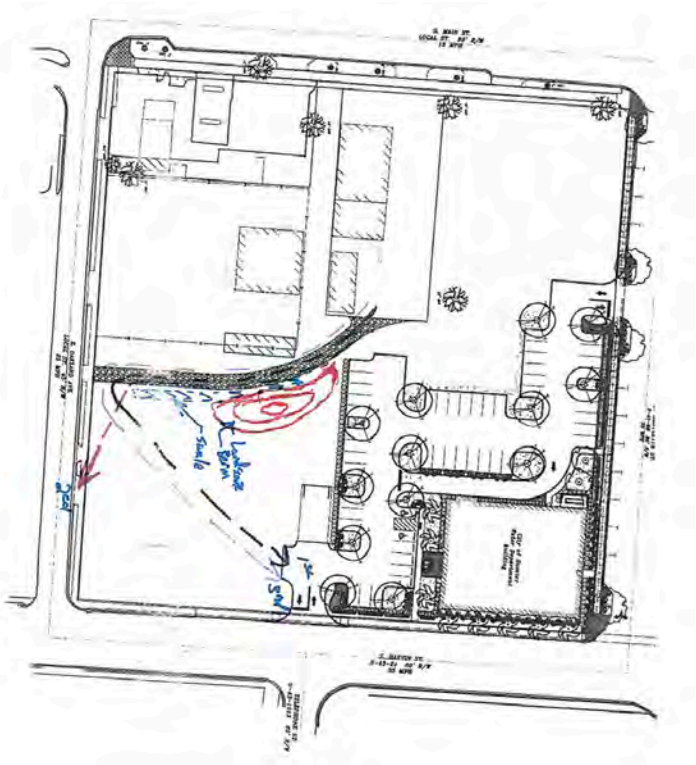
This case arises from Respondent's ownership and use of land located within the municipal limits of the City of Sumter at 203 S. Main Street. The Respondent has owned that real property and operated "Andrews Small Engine" from that location since March 1988. As the Respondent's business involved both customers and vendors transporting equipment, a rear-entrance to that property was essential and necessary. Over the years, the use of a rear-entrance on this property resulted in an open and obvious pathway worn across the neighboring property to the rear of the Respondent's business. The neighboring property address being 130 S. Harvin Street in Sumter, South Carolina.

In or about July 2018, Appellant City of Sumter began construction on a new City Water Department building on the 130 S. Harvin St. property. During that construction, a dispute arose between the Respondent and Appellant City about the Respondent's continued use of the rear-entrance to S. Harvin St. Ultimately, Appellant City blocked the original rear-entrance across the lot to S. Harvin with a straight-cut curb and instead created a "side-entrance, that ran from the rear of Respondent's property, to W. Oakdale Avenue,

The original rear-entrance pathway was so obvious it appeared in Google Maps overheard satellite imagery, as depicted in the image below (left image - original "rear entrance" pathway circled in red) and the side-entrance ultimately constructed by Appellant City is depicted in the other image (right image – "side entrance" pathway circled in blue):



The Respondent alleged that the marked and defined continued use of the rear-entrance for more than twenty (20) years created a prescriptive easement and/or easement by implication. Upon consultation with legal counsel, Respondent continued to use his rear entrance so as to not lose any rights he had to that easement. That use involved the Respondent driving across the grass between the side-entrance and S. Harvin Street (as depicted in this diagram produced in discovery):



It has been established through discovery that Appellant City and the Respondent were involved in an ongoing dispute over the Respondent's rights to access his property from the Harvin Street or "rear" of his property. While that dispute was ongoing, Appellant City asked Appellant Police Department to investigate the Respondent for travelling across the grass to use his rear entrance. As a result of that investigation, Appellant Police Department Sgt. Joseph Lane swore out an arrest warrant against the Respondent for a violation of S.C. Code §16-11-510(A) Malicious Injury to Animals, Personal Property, injury value $2,000 or less.

The Respondent turned himself in on that warrant on May 28, 2019. Sgt. Lane testified he was not present for the Respondent's bond hearing, but he did engage in *ex parte* communications with Magistrate Judge Blanding before the bond hearing. The Respondent was denied a personal recognizance bond despite being a lifelong resident and business owner of Sumter, having no criminal record, having turned himself in, and there being no allegations of danger or violence.

The criminal prosecution of those charges ultimately ended with the Respondent agreeing to purchase the side-entrance from the City for $20,000.00, but only after the Respondent agreed to provide Appellant City a written easement to use the side-entrance and a right of first refusal to purchase the side-entrance in writing, those documents being executed on or about May 26, 2020.

When this case appeared on the trial roster for the July 10, 2023 term of jury trials[1], Respondent filed a *Pre-Trial Rule 16 Motion and/or Omnibus Motion in Limine* on June 26, 2023 and *Pretrial Brief and Request for Pre-Trial Hearing in Limine* on June 30, 3023. When the parties appeared for the roster meeting July 10, 2023, Appellants informed the Trial Court they were not ready to proceed because they intended to file motions. Later that day, Appellants filed *Motion for*

[1] The July 10, 2023 term of court was not the first time the case had appeared on the jury trial roster for Sumter County Common Pleas Court. Respondent has shown up for no less than three (3) jury trial rosters and informed the Court he was ready to proceed with trial.

Summary Judgment under Rule 56 and *Motion to Withdraw/Amend Admissions under Rule 36(b)*. Respondent filed responses in opposition to both defense motions on July 31, 2023.

On January 29, 2024, the parties appeared before the Hon. R. Ferrell Cothran on Appellants' motions for summary judgment and to withdraw/amend admissions under Rule 36(b). While the Trial Court did not consider the other motions contained in Respondent's June 26, 2023 omnibus motion, the Trial Court did consider Respondent's motion #1 along with the Appellants' motions, as Respondent's motion #1 spoke directly to the Appellants' motion to withdraw/amend admissions under Rule 36(b) and was incorporated by reference in Respondent's June 31, 2023 response in opposition to Appellants' motion to withdraw/amend.

Subsequent to the January 29, 2024 hearing, the Trial Court informed the parties via email dated March 26, 2024 that the Trial Court was denying the Appellants' motions and instructed Respondent's counsel to prepare an order. Respondent's counsel prepared a proposed order and submitted it later that same day, with Appellants' counsel replying via email that same afternoon that:

> We have several, substantial concerns over the "proposed" Order and we would like an opportunity to be heard on those concerns before any Order is signed. Please note our objection, and please allow us time to formulate our specific objections to the "proposed" Order before it is executed.

Appellant email March 26, 2024 as reproduced in Respondent's August 20, 2024 response in opposition, **Exhibit 3,** p.2.

The Trial Court replied via email on March 27, 2024 that:

> Judge Cothran will hold off on signing anything until yall are heard on the matter. We can either have a hearing or you can send us what yall believe the order should say and we will look at both proposed orders.

Trial Court email March 27, 2024 as reproduced in Respondent's August 20, 2024 response in opposition, **Exhibit 3,** p.2.

On April 1, 2024, Appellants requested a hearing, in person, if possible.

On April 9, 2024, the Trial Court informed the parties that the trial set for that week had fallen through and asked if there was a date/time that week that could work for Appellants' requested hearing. Appellants responded that they did not have availability that week and the Trial Court inquired as to availability for the week of April 15 or 22, 2024.

A status conference was set for April 19, 2024. During that conference with the Trial Court, Appellants raised concerns about language they felt was necessary to add to the proposed order. The Trial Court directed Appellants to submit their proposed language to Respondent's counsel to see whether any agreement could be reached.

On May 15, 2024, having received no proposed language from Appellants, Respondent's counsel sent the following email to Appellants' counsel:

> Alex/David:
>
> It's been almost a month since the conference call with Judge Cothran on 4/19, where Judge Cothran directed you to provide me your proposed language you wanted him to consider adding, so I could see whether or not I had any problems with it.
>
> You have had the proposed order for 50 days.
>
> My client is ready to have his case tried and this is delaying that.
>
> What is the holdup?

Respondent's email May 15, 2024 as reproduced in Respondent's August 20, 2024 response in opposition, **Exhibit 3,** p.3.

Appellants' counsel replied via email on May 17, 2024, informing Respondent's counsel they would have their proposed language to Respondent's counsel for review by Monday, May 20, 2024.

Having received no proposed language, Respondent's counsel notified Appellants' counsel via email on the morning of May 23, 2024 that if he did not have Appellants' counsel's proposed language by the afternoon, he was asking the Trial Court to sign the proposed order as is.

Appellants' counsel finally submitted their proposed language for the order to the Respondent via email at 4:48 p.m. May 23, 2024.

On May 30, 2024, Respondent's counsel sent Appellants' counsel correspondence via email explaining the proposed language he would agree to add to the order and which proposed language he was not agreeing to add and why. On June 6, 2024, Respondent's counsel submitted his new edited proposed order with the added Appellants' language to the Trial Court, along with his May 30th correspondence explaining why he was not agreeing to add the rest of the Appellants' requested language; with the Appellants submitting their own proposed order with all of their proposed language.

Following all of the above, the Trial Court issued an order on August 9, 2024, denying the Appellants' motion for summary judgment, denying Appellants' motion to withdraw/amend admissions under Rule 36(b) and finding that the Respondent's requests for admission nos. 1-17 to Appellant City are deemed ADMITTED. *See Exhibit A to Appellant's Notice of Appeal, August 9, 2024 Order.*

Appellants filed a notice of motion and motion to reconsider that order, on August 19, 2024. In that motion, Appellants specifically argued the Trial Court's Order "does not address several arguments raised by [Appellants]" and "contains several errors of law."

Respondent filed a response in opposition to that motion on August 20, 2024, in which Respondent specifically argued:

> [Appellants'] claimed insufficiencies of the order in regards to the RFAs ignore that fact the Order as issued **<u>does</u>** address the raised issues. The Order plainly addresses issues one (1) and two (2) regarding service with its specific findings regarding

> sworn affidavits of service and the [Appellants'] representations to both the Court and [Respondent's] counsel via email on September 22, 2021.
>
> As to issues three (3) and four (4) with the RFAs, as a practical matter, much of the requests **should** have been admitted: the warrant is defective from the plain language on its face, as the facts relayed do not support a violation of either S.C. Code §16-11-510 or -520; the [Appellants'] own witnesses have admitted under oath facts supporting the elements establishing a prescriptive easement;]Appellants'] own witness admitted under oath to *ex parte* communications with the Court prior to the bond hearing; the [Appellants] have been unable to produce any evidence that any alleged damage was ever repaired; etc.
>
> The fact that the [Appellants] failed to timely respond to the RFAs even after being noticed of that failure and acknowledging they would be looking into the issue with their clients, supports the Court's finding to deny the motion to withdraw/amend. As is evidenced by the current motion, the [Appellants] goal is to simply delay and obstruct this matter going to trial.
>
> [Appellants'] claims that the Court's order is insufficient because it does not specifically address things the [Appellant] now claims it should, ignores the fact that the [Appellants'] own proposed order did not address those matters as the [Appellants] are now requesting and that the order **does** adequately address the issues. As such, the [Appellants'] motion to reconsider should be denied.

Exhibit 3, p.5.

Subsequent to the above, this case continued to show up on multiple Sumter County Common Pleas Court Jury Trial rosters, but was not subject to being called due to Appellants' pending motion to reconsider.

On March 18, 2025, after having received yet another notice that this case was on the jury trial roster, Respondent's counsel sent Judge Cothran's law clerk an email, courtesy copying Appellants' counsel,

> Kimberly:
>
> I hope you and Judge Cothran are doing well.
>
> The above-referenced case has kept popping up at the top of the common pleas roster for some time now, but we have not been able to go forward as the defense has a motion to reconsider Judge Cothran's August 9, 2024 order.

> I have attached Judge Cothran's August 9th Order, Defendant's motion to reconsider, and Plaintiff's response in opposition to that motion to this email for your convenience.
>
> We recently received notice that the case is again on the April 7 trial roster. Plaintiff is ready to proceed to trial and would greatly appreciate any consideration Judge Cothran could give to resolving the pending motion so that this matter may proceed to trial.
>
> Please let me know if you need anything else from the Plaintiff.
>
> Thanks.
>
> Patrick

Exhibit 4.

The Trial Court subsequently issued the March 19, 2025 Order denying Appellants' motion for reconsideration. *See Exhibit B to Appellant's Notice of Appeal, March 19, 2025 Order.*

Respondent subsequently filed, again, a pretrial brief along with proposed jury *voir dire*, jury charges and verdict form on March 20, 2025.

On March 26, 2025, Respondent's counsel sent Appellants' counsel correspondence via email with trial subpoenas for four (4) agents/employees of the Appellants, asking Appellants' counsel to confirm acceptance of service of the subpoenas requiring those party witnesses appearance at trial the week of April 7, 2025.[2]

On March 31, 2025, Respondent's counsel emailed the law clerk and administrative assistant for the designated Trial Judge on the April 7, 2025 Sumter County Common Pleas Jury Trial term of court, courtesy copying Appellants' counsel. That email notified the Hon. S. Bryan Doby that while this case was showing up as #5 on the April 7, 2025 jury trial roster, Respondent's counsel believed it would like be #1 based on roster notes and communications with other counsels

[2] As has been the norm in this litigation, Appellants' counsel refused to respond in any way that correspondence.

on the other cases. As such, that email provided for Judge Doby's convenience the Respondent's pretrial filings and pending Omnibus motion *in limine*.

On April 2, 2025, Appellant filed their Notice of Appeal.

This motion to dismiss follows.

ARGUMENT

Respondent moves for dismissal of this appeal on the grounds Appellant is seeking to appeal an unappealable interlocutory order which is not immediately appealable. Specifically, Appellant is seeking to appeal an order denying summary judgment and determining the sufficiency of discovery responses.

Rule 201 states "appeal may be taken, as provided by law, from any final judgment, appealable order or decision." Rule 201(a) SCACR.

I. Denials of Summary Judgment are not appealable

This Court has made abundantly clear that denial of summary judgment is not appealable:

In *Ballenger*, the Court stated:

> This Court has repeatedly held that the denial of summary judgment is not directly appealable. Further, this Court has held that the denial of summary judgment is not reviewable even in an appeal from final judgment.
>
> Ballenger v. Bowen, 313 S.C. 476, 476-77, 443 S.E.2d 379, 380 (citations omitted).

> In addition, the *Ballenger* Court noted that it is "unnecessary [for the trial judge] to make findings of fact and conclusions of law in denying motions for summary judgment." Id. at 478 n.1, 443 S.E.2d at 380 n.1 (citing Rule 52, SCRCP). Thus, there would be no basis on which an appellate court could make its review.

Hedgepath v. AT&T, 348 S.C. 340, 365, 559 S.E.2d 327, 341 (Ct. App. 2001) *cf.* Holloman v. McAllister, 289 S.C. 183, 345 S.E.2d 728 (1986) (declining to address denial of summary

judgment after trial while addressing other appealable issues); Davis v. Tripp, 338 S.C. 226, 525 S.E.2d 528 (Ct. App. 199) (stating denial of summary judgment was not reviewable either before or after final judgment).

If there were any confusion, such was eliminated by the South Carolina Supreme Court when it affirmed this Court in Olson v. Faculty House of Carolina, Inc., 354 S.C. 161, 580 S.E.2d 440 (2003):

> We adhere to recent precedent and hold ***that the denial of a motion for summary judgment is not appealable, even after final judgment***. To the extent the cases cited by the Court of Appeals are inconsistent, they are expressly overruled. Accordingly, the Court of Appeals' refusal to consider the merits of Faculty House's appeal is affirmed.

Id. at 168, 444 (emphasis added).

II. Discovery orders are not appealable

An order compelling discovery does not ordinarily involve the merits of this case and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577 (2003), citing Ex Parte Whetstone, 289 S.C. 580 (1986). Discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statutes, involve the merits of the action or effect a substantial right.[3] Grosshuesch v. Cramer, 377 S.C. 12, 30 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69 (1965).

Respondent's counsel has previously challenged similar improper appeals of discovery orders and this Court has dismissed those appeals. In *Locklear v. Marlboro Co., et al.*, this Court dismissed a similar improper appeal, finding:

[3] A "substantial right" is when "such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." Mid-State Distribs. v. Century Imps., 310 S.C. 330, 334 n.4. (1993). This is not the case with the order Appellant seeks to appeal.

> 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, 20, 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 effect 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.").

The appellant in *Locklear* petitioned for a rehearing and this Court denied that petition. The appellant then petitioned for a writ certiorari to the South Carolina Supreme Court and that petition was denied. **Exhibit 1**, p. 15-17, Locklear v. Marlboro Co., et al., Appellate Case No.2018-001510, and Appellate Case No.2019-000064.

In *Pendarvis v. L.C. Knight, et al.*, this Court dismissed a similar appeal of a discovery order, citing the exact same case law from the *Locklear* case above. **Exhibit 2**, p. 2, Pendarvis v. L.C. Knight, et al., Appellate Case No.2023-000757. In *Pendarvis*, as in *Locklear*, the Appellant petitioned for a writ of certiorari to the South Carolina Supreme Court. Just as it had in *Locklear*, the Supreme Court denied the petition, holding "Because the court of appeals correctly held the discovery order was not immediately appealable, we deny the petition for a writ of certiorari to the court of appeals." **Exhibit 2**, p. 8, Pendarvis v. L.C. Knight, et al., Appellate Case No.2023-001533.

Appellants should be well-aware that discovery orders are unappealable, as one of the three "Attorneys for the Appellant" listed on the Notice of Appeal filed in this matter, Frederick N. Hanna, Jr., was listed as a "Counsel for Petitioner" on the *Pendarvis* petition for writ of certiorari.

III. This appeal warrants sanctions

Monday, April 7, 2025 would have been, at a minimum, the fourth (4th) time that the Respondent showed up ready to try his case to a Sumter County jury.

Notably, a Consent Scheduling Order was filed in this matter on July 14, 2022, in which Appellants consented to the following deadline:

1. The parties shall complete discovery on or before October 31, 2022.

2. The parties shall mediate this case on or before November 30, 2022.

3. This case shall be subject to trial on or after December 19, 2022.

Despite agreeing to those deadlines, Appellants have continuously answered not ready for trial and refused to even mediate the case.[4]

As Respondent noted to the Trail Court in opposition to Appellants' motion for reconsideration, **72 days** elapsed from the time Respondent submitted the first proposed order and the Appellants' submitted their proposed language to the Trial Court.

That came **after** the Appellants failed for **811 days** to even address the un-responded to Rule 36 requests for admission[5]; failed for **656 days** to "look into the issue" as they represented to the Trial Court they would do[6]; and showed up for trial on July 10, 2023 having had Respondent's omnibus motion *in limine* with motion #1 about the un-responded to requests for admission for **14 days**, only to ask for continuance because there were "going to file" motions.

Rule 269 of the South Carolina Appellate Court Rules states:

> **Where an appeal**, petition, or motion or return **is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules**, the appellate court may upon its own motion or that of a party, after ten (10) days notice, **impose upon**

[4] As noted in Respondent's pretrial brief filed June 30, 2023: "The parties had mediation scheduled for April 26, 2023, but that mediation was cancelled at opposing counsel's request. When Plaintiff's counsel asked about having it rescheduled, he was informed via email that opposing counsel wanted to hold off because he was going to be filing a motion. As such, Plaintiff believes the failure to have mediation is solely due to the Defendants and Plaintiff is ready for trial."

[5] Respondent's initial Rule 11 correspondence dated April 20, 2021 to Appellants' motion to withdraw/amend filed July 10, 2023.

[6] Appellants' email to the Trial Court dated September 22, 2021 to to Appellants' motion to withdraw/amend filed July 10, 2023.

> **offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require**. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari event though the matter may be frivolous.

Rule 269 SCACR (emphasis added).

Respondent argues the above shows that not only should Appellants appeal be dismissed, but Appellants **know** their appeal is improper and the only purpose for Appellants to file this appeal in light of that knowledge, was for the improper purpose of delaying, yet again, this case being tried before a Sumter County jury.

To that end, the timing of Appellants' appeal is notable. The appeal was filed via email sent April 2, 2025, the last day to request a continuance for the April 7, 2025 jury trial term of court, pursuant to the electronic roster notice mailed to the parties on March 18, 2025. *See* **Exhibit 4.** The timing of the appeal is neither accident nor happenstance. Appellants waited until the last day, ignoring communications from Respondent attempting to coordinate trial appearances, to simply harass and delay Respondent's attempts to try a case **840 days** after the "subject to trial" deadline the Appellants consented to.

Appellants continued attempts to delay this case by engaging in an improper appeal, supports that sanctions are necessary to stop such improper abuse of the appellate rules.

At a minimum, Respondent would respectfully request the Court make a specific finding that the appeal is being dismissed under Rule 269 SCACR as frivolous, so as to discourage like conduct in the future. As evidenced by this appeal in light of this Court's prior orders in the *Locklear* and *Pendarvis* cases, merely dismissing this appeal as an unappealable interlocutory order will do nothing to discourage parties like the Appellants from wasting the Court's and opposing parties' time and resources filing such improper appeals going forward. When the record shows that delay and obstructionism has already caused prejudice to the party not bringing the

appeal, failure to take any action other than dismissing the appeal would reward such improper and prejudicial appellate conduct.

CONCLUSION

Respondent respectfully requests that the Court dismiss the appeal, find the appeal to have been frivolous pursuant to Rule 269 and imposing such sanctions as the Court deems proper given the circumstances of this case and to discourage like conduct in the future.

Respectfully Submitted,

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April 2, 2025
Florence, South Carolina

Attorney for the Respondent

Exhibit 1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, ...Respondent,

vs.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement Division, ... Defendants.

Of whom, Southern Health Partners and Dr. Charles Bush are ..... Appellants.

MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS

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T: 843-669-5634
Attorney for Respondent

This motion is made pursuant to Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. Respondents Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, move this Court to dismiss the appeal that was filed and served via United States Postal Service on August 16, 2018. The appeal is from an unappealable order and would serve no purpose other than to further unnecessary delay in this matter. For the reasons stated below, this Court should dismiss this appeal to avoid such delay.

BACKGROUND

This is a case involving wrongful death and survival claims arising from an attempted suicide incident involving Roy Locklear while he was in custody at the Marlboro County Detention Center (MCDC) on November 5th and 6th, 2014.1 A summons and complaint were filed in this matter on or about February 24, 2017, following a Notice of Intent to file suit in a medical malpractice case that had been filed pursuant to S.C. Code §15-79-125.

The factual allegations supporting the Plaintiff's causes of action deal with the acts/omissions of the Defendants in transporting, booking and screening the decedent and in failing to provide him the reasonable standard of care necessary for persons with substance abuse issues in a detention center setting. Given the relatively short amount of time Roy was actually in custody at MCDC before his attempted suicide and subsequent transport to the hospital, the allegations against the Appellants (Bush/SHP) arise from the role they play as the "Responsible Physician" for MCDC pursuant to the *Minimum Standards for Local Detention Facilities in South Carolina.*

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1 While Roy survived the initial suicide attempt, he never recovered, remaining hospitalized for severe hypoxic anoxic brain injury until his death on November 14, 2014.

The order for which Bush/SHP have noticed their intent to appeal is an order granting the Plaintiff's motion to compel discovery against Bush/SHP for their failure to adequately respond to the Plaintiff's initial discovery requests

On or about May 3, 2017, the Plaintiff served all defense counsels with initial discovery interrogatories and requests for production.

Subsequent to serving those discovery requests Plaintiff's counsel had to contact all of the Defendants due to not timely receiving responses. Ultimately, Plaintiff's counsel had to file a motion to compel against the other Defendants in this matter; said motion being filed on or about December 5, 2017. Bush/SHP were not included in that original motion to compel because they produced discovery responses on or about November 13, 2017. However, in acknowledgement that those initial responses were not adequate, Bush/SHP's counsel contacted Plaintiff's counsel to let him know that he was in the process of trying to get the information to more fully respond.

Via an email dated May 8, 2018, Plaintiff's counsel reminded Bush/SHP's counsel that the Plaintiff was owed supplemental discovery responses and that he needed that material prior to upcoming depositions scheduled for the week of June 11, 2018. Bush/SHP's counsel responded via email that he "should be able to supplement by Wednesday of next week."

On Friday May 18, 2018 (two days after the supplementation response that had been promised the week before), Bush/SHP's counsel sent an email that included a table of contents for Bush/SHP's policies and procedures manual asking Plaintiff's counsel to call to "discuss which items are necessary for this case" and informing Plaintiff's counsel for the first time that Bush/SHP would require a confidentiality agreement, which was in the process of being drafted.

That same day, Plaintiff's counsel responded to that email via a reply email that explained why such proposed responses were inadequate, his objections to a confidentiality agreement and

letting Bush/SHP's counsel know he would be available to discuss the issue during the first part of the following week. Receiving no further communication or any supplemental discovery response, the current motion to compel was filed on June 6, 2018. In that motion, the Plaintiff specifically identified thirteen (13) interrogatories (Nos. 3, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19 and 20) and five (5) requests to produce (Nos. 3, 4, 5, 9 and 11) as being inadequate/non-responsive.

On July 10, 2018, Bush/SHP supplemented their discovery responses and produced a privilege log asserting that a 101-page manual titled "Policy and Procedure Manual for Health Services in Jail" was the "Confidential Work Product of Southern Health Partners, Inc."

On July 11, 2018, Bush/SHP's counsel sent Plaintiff's counsel an email that had attached an affidavit from Jennifer I. Hairsine, identified as the President and Chief Executive Officer of SHP. The email asked if Plaintiff's counsel would reconsider a confidentiality agreement in light of the affidavit and also asked if Interrogatory #18 could be resolved if Bush/SHP provided a list of suicide/suicide attempts at MCDC.

On July 12, 2018, Plaintiff's counsel informed Bush/SHP's counsel via email that his position on neither issue had changed.

On July 13, 2018, a hearing was held before the Honorable Roger E. Henderson on the Plaintiff's motion. Both parties appeared at that hearing through counsel and made argument to the court. Judge Henderson took the matter under advisement and ultimately issued an order which Bush/SHP has noticed an intent to appeal.

ARGUMENT

The Plaintiff moves for dismissal of this appeal on the grounds that Bush/SHP is seeking to appeal an interlocutory order which is not immediately appealable. Specifically, Bush/SHP is seeking to appeal an order compelling discovery.

An order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577, 582 S.E.2d 405, 406 (2003), citing Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986). Discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statutes, involve the merits of the action or effect a substantial right.2 Grosshuesch v. Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965).

Since a contempt order is final in nature, an order compelling discovery may be appealed **only** after the trial court holds a party in contempt. Tucker at 577, 406-407, citing Hooper v. Rockwell, 334 S.C. 281, 513 S.E.2d 358 (1999), emphasis added. Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. Tucker at 577, 407, citing Ex parte Whetstone.

In the present case, Bush/SHP has failed to obtain any such final contempt order and, as such, their appeal should be dismissed.

In their *Notice of Intent*, Bush/SHP cites to the City of Columbia v. A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). However, this case does not support their appeal. In City of Columbia, after they received a FOIA request seeking an internal police report, the City brought a declaratory judgment action seeking clarification under the South Carolina Freedom of Information Act (FOIA). The City had refused to provide the contents of the internal police report and instead sought a declaratory judgment from the trial court that the report

---

2 A "substantial right" is when "such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." Mid-State Distribs. v. Century Imps., 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). That is not the case with the present order.

was exempt from disclosure. As part of their discovery requests, the ACLU asked for the very report that was the subject of the action. City of Columbia at 386, 748.

When the City did not produce the report in response to the ACLU's requests for production, the ACLU filed a motion to compel the report to be provided, which the trial court denied. The ACLU appealed. In denying that appeal, the Court noted that the production of police report was very the subject matter of the case itself. City of Columbia at 388, 749, citing Knight Publishing Co. v. University of South Carolina, 295 S.C. 31, 367 S.E.2d 20 (1988) (a FOIA action in which the plaintiff's discovery requests sought production of documents which were the subject matter of the lawsuit).

Bush/SHP's purpose for citing to the City of Columbia case in support of their right to appeal Judge Henderson's order would appear to arise from the fact that the order at issue discusses FOIA. This reliance is misguided, as the discussion of FOIA in the order at bar arises merely in support of the argument that Bush/SHP are not entitled to any protection for the documents responsive to the Plaintiff's discovery requests because such documents are public records that would be subject to production under FOIA. In other words, whether or not those documents are subject to FOIA is not the subject matter of this case (as they were in City of Columbia and Knight Publishing).3

In the present case, the discussion of FOIA and the production requirements for documents subject to FOIA merely serve as grounds for why the trial court granted the Plaintiff's motion to compel. As Judge Henderson explained in his order:

During the hearing, the Court specifically asked Bush/SHP to explain how the

3 Just because FOIA is mentioned in a case does not make *City of Columbia* controlling. *See* Evening Post Publ. Co. v. Berkeley County Sch. Dist., 392 S.C. 76 (2011).

policies and procedures they were required to have, pursuant to the MSSC, fell within the definition of trade secrets pursuant to S.C. Code §30-4-40(a)(1). Bush/SHP could not offer any response other than a conclusory statement that the material was their proprietary work product.

The Court finds that policies and procedures required under the MSSC do not fall into the above definition. While Bush/SHP may not themselves be a "public body," the policies and procedures they developed and approved (as required by the MSSC for medical screening, care and classification at the Marlboro County Detention Center) are required by the MSSC to be in "the written manual of all policies and procedures for the operation of the facility" and "shall be made readily available to all personnel." MSSC, §1021, p.13.

The purpose of the MSSC requiring these policies and procedures to be in place is obvious: the policies and procedures used to screen, classify and care for persons under the control of the State are clearly a matter of great public concern and interest. If they so desire, the people of Marlboro County have the right to use FOIA to view the policies and procedures for healthcare that will applicable to those individuals providing care for the inmates being held at the County's detention center. The Court finds that this type of material fits squarely within the definition of information that is specifically designated as public information subject to FOIA as "administrative staff manuals and instructions to staff that affect a member of the public." S.C. Code §30-4-50(A)(2).

The Court notes that in her affidavit, Ms. Hairsine testifies that "SHP's sole business is jail health care services – we do not get pulled into other business lines. This allows SHP to be very familiar with state jail standards...as a basis for our policies, procedures, and operations." *Affidavit of Jennifer Hairsine*, ¶3. If that is true, then there is no excuse for Bush/SHP to not realize that the MSSC require that the policies and procedures they create/review/approve for use in South Carolina detention centers and jails must be readily available to all personnel of each facility. MSSC §1021. As such policies and procedures are used by a public body and are instructions to staff that affect a member of the public, they are public information subject to production under the South Carolina Freedom of Information Act. S.C. Code §30-4-20(c) and §30-4-50(A)(2).

Order, p.14-15.

In addition to the grounds explained above, Judge Henderson also found additional grounds for granting the Plaintiff's motion:

The Court finds Bush/SHP fails to meet this burden. Specifically, the only support Bush/SHP offered the Court in support of their argument was the affidavit of Jennifer I. Hairsine, the President and Chief Executive Officer of Southern Health

> Partners, Inc. That affidavit offers only self-serving, conclusory statements such as "this policy manual is confidential and contains proprietary information." *Affidavit of Jennifer Hairsine*, ¶8. There is no attempt to explain to the Court what makes this material proprietary information; just a conclusory assertion that it is. The affidavit contains no specific demonstrations of fact regarding any clearly defined and very serious injury Bush/SHP would suffer if not afforded the protection they seek. Rather, there is only an anecdotal assertion that "SHP has been damaged in the past by former vendors and employees, as well as a former opposing expert witness attempting to access and use SHP's policy and Procedure Manual and other proprietary information to obtain business from SHP's existing and potential clients." *Affidavit of Jennifer Hairsine*, ¶9.
>
> Bush/SHP did not identify to the Court any specific instance of such harm occurring and ignores the fact that the affidavit itself discredits their argument. Simply put, if former vendors, employees and opposing expert witnesses already have access to this alleged proprietary material, how can it be "secret"? "Unlike other assets, the value of a trade secret hinges on its secrecy." Laffite v. Bridgestone Corp., 381 S.C. 160, 674 S.E.2d 154 (2009).
>
> The Plaintiff effectively drove home this point during the hearing by showing the Court that he had obtained forty-nine (49) pages of the 101-page "Policy and Procedure Manual for Health Services in Jails," the alleged proprietary material for which Bush/SHP argues it needs protection. Plaintiff's counsel was able to obtain this material as it had previously been produced in other litigation without any protection. That combined with the admissions in Ms. Hairsine's own affidavit support the fact that the ship has sailed on Bush/SHP's ability to claim this material is secret. "In order to be protected, a trade secret must be the subject of reasonable efforts 'to maintain its secrecy.'" Hartstock v. Goodyear Dunlop Tires N. Am. Ltd., 2018 S.C. Lexis 44, 7-8 (S. Ct. 2018), citing S.C. Code §39-8-20(5)(a)(ii). The protection Bush/SHP asks this Court to grant now is merely an attempt to shut the barn door after the proverbial horse has already left.

Order, p.8-9.

In vacating an opinion from the Court of Appeals that reversed an order compelling discovery, the South Carolina Supreme Court described Tucker as "holding **an order compelling discovery is not immediately appealable** even if it is challenged as violating the attorney-client privilege." Wieters v. Bon-Secours St. Francis Xavier Hosp., Inc., 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009), emphasis added.

If the Wieters court was not willing to immediately review a discovery order that was

alleged to violate attorney-client privilege, the Plaintiff fails to see how the present discovery order is appealable. Bush/SHP's actions appear to be more of the same dilatory conduct which led to the appealed order. As Judge Henderson noted in finding Bush/SHP's discovery conduct to be abusive, Bush/SHP never actually moved for protection. Order p.20. Nor did Bush/SHP ever offer any "explanation for their delay in failing to supplement their responses as they originally represented to the Plaintiff they would do when they submitted their initial response." Order, p.21.

This Court should not allow Bush/SHP to continue to delay this matter by refusing to produce basic discovery.

CONCLUSION

Based on the above, the Plaintiff respectfully requests that the Court dismiss Bush/SHP's appeal on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

Respectfully submitted,

August 27, 2018

Patrick J. McLaughlin
Wukela Law Firm
PO Box 13057
Florence, SC 29504
T: 843-669-5634
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, Respondent,

vs.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement Division, Defendants.

Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

CERTIFICATE OF SERVICE

I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Respondent's Motion to Dismiss and Memorandum In Support of the Motion to Dismiss on the Appellants and Defendants by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on August 27, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

Mark V. Gerde
John E. Tyler
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
T: 803-256-2233
Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

Other Counsel of Record:
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Kathleen Sue Cox

Kathleen Sue Cox

EX.1-000000013

WUKELA LAW FIRM

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August 27, 2018

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

Re: Appellate Case No. 2018-001510
Common Pleas Case No. 2017-CP-34-00064
Gary Locklear, Individually and as Personal Representative of the Estate of Roy Locklear, Respondent,
vs.
Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement Division, Defendants.
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

Dear Ms. Kitchings:

Enclosed please find for filing the following:

1. Original and six (6) copies of Motion To Dismiss and Memorandum In Support of the Motion to Dismiss;
2. Certificate of Service on the Appellant and Defendants;
3. A filing fee of Twenty-Five ($25.00) Dollars.

Yours truly,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM:ksc
Enclosures

cc:
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Attorneys for Southern Health Partners and Dr. Charles Bush, Appellants

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Attorney for Marlboro County, Marlboro County Sheriff's Office,
Marlboro County Detention Center

The South Carolina Court of Appeals

Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear,
Respondent,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, and South Carolina Law Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush are Appellants.

Appellate Case No. 2018-001510

ORDER

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.").

FOR THE COURT C. J.

Columbia, South Carolina

FILED
October 4, 2018

cc: John Earle Tyler, Esquire
Mark V. Gende, Esquire
Patrick James McLaughlin, Esquire

The South Carolina Court of Appeals

Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear,
Respondent,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, and South Carolina Law Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush are Appellants.

Appellate Case No. 2018-001510

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Young J.

Paul E. Short, Jr. J.

H. Bruce Williams J.

Columbia, South Carolina

FILED
December 18, 2018

The Supreme Court of South Carolina

Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear,
Respondent,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro County Detention Center, Dr. Charles Bush, Southern Health Partners, and South Carolina Law Enforcement Division, Defendants,

Of which Southern Health Partners and Dr. Charles Bush are Petitioners.

Appellate Case No. 2019-000064

Lower Court Case No. 2017-CP-34-00064

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

June 28, 2019

Exhibit 2

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

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

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

ORDER

On July 10, 2023, we dismissed this appeal as interlocutory. Appellant filed a petition for rehearing of the dismissal. After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

FILED
Aug 29 2023

cc:
Patrick James McLaughlin, Esquire
C. Bradley Hutto, Esquire
Daniel Clifton Plyler, Esquire
Austin Tyler Reed, Esquire
Frederick Newman Hanna, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Sep 28 2023
S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Maite Murphy, Circuit Court Judge
Case No. 2021-CP-18-01486

Appellate Case No. 2023-000757

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 …….……. Petitioner.

PETITION FOR WRIT OF CERTIORARI

Daniel C. Plyler, SC Bar No. 72671
Austin T. Reed, SC Bar No. 102808
Frederick N. Hanna, Jr., SC Bar No. 104659
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Counsel for Petitioner

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant its petition for a writ of certiorari.

SMITH | ROBINSON

s/ Daniel C. Plyler

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Counsel for Petitioner

Columbia, South Carolina

September 28, 2023

The Supreme Court of South Carolina

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 Petitioner.

Appellate Case No. 2023-001533

ORDER

Petitioner seeks a writ of certiorari to review the court of appeals' dismissal of the underlying order of the circuit court on the ground that the discovery order was not immediately appealable. Because the court of appeals correctly held the discovery order was not immediately appealable, we deny the petition for a writ of certiorari to the court of appeals. *See Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (holding discovery orders are not immediately appealable because they do not involve the merits of the case or affect a substantial right); *Richardson v. Halcyon Real Est. Servs.*, 439 S.C. 419, 427, 887 S.E.2d 153, 157 (Ct. App. 2023) (holding a discovery sanctions order neither involves the merits of the case nor affects a substantial right and, therefore, is not immediately appealable).

We are concerned, however, about the order to produce the requested personnel files, which contain highly personal information, *without protection*. Therefore, we issue a common law writ of certiorari, dispense with further briefing, and direct

the Honorable Maite Murphy to amend the discovery order to include language adequately protecting the requested personnel files from disclosure to anyone other than the parties, the attorneys, and their staffs. *See Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009) (noting the right of privacy is an issue of significant public interest, and a trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense" if the discovery process creates a particularized harm to a litigant or third party (citing Rule 26(c), SCRCP)); *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010) (explaining a writ of certiorari may be issued to review a discovery order when exceptional circumstances exist).

Respondent has filed a motion to dismiss the petition for a writ of certiorari and a request for sanctions. The motion to dismiss and the request for sanctions are denied.

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
December 13, 2023

cc:
Daniel Clifton Plyler, Esquire
Austin Tyler Reed, Esquire
Frederick Newman Hanna, Jr., Esquire
Patrick James McLaughlin, Esquire
C. Bradley Hutto, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Maite Murphy

Exhibit 3

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT C. A. NO: 2021-CP-43-00099
ROBERT ALLEN ANDREWS, Plaintiff, vs. CITY OF SUMTER and CITY OF SUMTER POLICE DEPARTMENT, Defendant(s).	**PLAINTIFF'S RETURN TO MOTION AND RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION**

TO HON. R. FERRELL COTHRAN AND DEFENDANTS AND THEIR ATTORNEYS

Plaintiff hereby submits his Response in Opposition to Defendants' *Notice of Motion and Motion to Reconsider* the Court's August 9, 2024 order ("the Order"). For the reasons stated herein, Defendant's motion should be denied, and the Order should stand as it is currently written, pursuant to Rule 52(a) SCRCP.

Summary

The Court's Order is appropriate and does not require the alteration, amendment, or reconsideration the Defendants requests, as such requests are simply further attempts to delay this matter and keep it from being called for trial. **Notably, Defendants took 72 days to submit their proposed order language to the Court, none of which addresses issues the way Defendants now seek to have the Court reconsider its Order.**

Relevant Procedural History

Plaintiff has shown up for jury trial rosters no less than three (3) times and informed the Court he was ready to proceed with trial. During the July 10, 2023 jury term, when this matter was no.2 for trial, the Defense claimed it was not ready for trial due to motions they intended to file.

Later that same afternoon, the Defense filed the motion for summary judgment and motion to withdraw/amend admissions subject to the Order Defendants now seek to have the Court reconsider.

Plaintiff filed written responses in opposition to those motions on July 31, 2023 and a hearing was held on those motions on January 29, 2024.

Subsequent to that hearing, the Court informed the parties via email dated March 26, 2024 that the Court was denying the Defendants' motions and instructed Plaintiff's counsel to prepare an order. Plaintiff's counsel prepared a proposed order and submitted it later that same day, with defense counsel replying via email that same afternoon that:

> We have several, substantial concerns over the "proposed" Order and we would like an opportunity to be heard on those concerns before any Order is signed. Please note our objection, and please allow us time to formulate our specific objections to the "proposed" Order before it is executed.

The Court replied via email on March 27, 2024 that:

> Judge Cothran will hold off on signing anything until yall are heard on the matter. We can either have a hearing or you can send us what yall believe the order should say and we will look at both proposed orders.

Defense email March 26, 2024.

On April 1, 2024, the defense requested a hearing, in person, if possible.

On April 9, 2024, the Court informed the parties that the trial set for that week had fallen through and asked if there was a date/time that week that could work. The defense responded that they did not have availability that week and the Court inquired as to availability for the week of April 15 or 22, 2024.

A status conference was set for April 19, 2024. During that conference with the Court, the defense raised concerns about language they felt was necessary to add to the Plaintiff's proposed order. The Court directed the defense to submit their proposed language to Plaintiff's counsel to see whether any agreement could be reached.

On May 15, 2024, having received no proposed language from the defense, Plaintiff's counsel sent the following email to Defense counsel:

> Alex/David:
>
> It's been almost a month since the conference call with Judge Cothran on 4/19, where Judge Cothran directed you to provide me your proposed language you wanted him to consider adding, so I could see whether or not I had any problems with it.
>
> You have had the proposed order for 50 days.
>
> My client is ready to have his case tried and this is delaying that.
>
> What is the holdup?

Plaintiff's email May 15, 2024.

Defense counsel replied via email on May 17, 2024, informing Plaintiff's counsel they would have their proposed language to Plaintiff's counsel for review by Monday, May 20, 2024.

Having received no proposed language, Plaintiff's counsel notified Defense counsel via email on the morning of May 23, 2024 that if he did not have Defense counsel's proposed language by the afternoon, he was asking the Court to sign the proposed order as is.

Defense counsel finally submitted their proposed language for the order to the Plaintiff via email at 4:48 p.m. May 23, 2024.

On May 30, 2024, Plaintiff's counsel sent Defense counsel correspondence via email explaining the Defense's proposed language he would agree to add to the order and which proposed language he was not agreeing to add and why. On June 6, 2024, the Plaintiff submitted his new edited proposed order with the added defense language to the Court, along with his May 30th correspondence explaining why he was not agreeing to add the rest of the Defendants' requested language; with the Defense submitting their proposed order with all of their proposed language.

The Court's Order is appropriate and does not require alteration, amendment, or reconsideration.

All of the above history is relayed simply to document that the Defendants in this case have had ample opportunity to make their record on these matters. Specifically, as noted above, 72 days elapsed from the time the Plaintiff submitted the first proposed order and the Defendants submitted their proposed language to the Court.

In denying Defendants' motions, the Court was not required to issue a formal, written order that made specific findings of facts or conclusions of law, as the plain language of the Rules of Civil Procedure provide that a formal order is not required:

> **Findings of facts and conclusions of law are unnecessary** on decisions of motion under Rules 12 or 56 **or any other motion** except as provided in Rule 41(b).

Rule 52(a), SCRCP (emphasis added).

Defendants' motion argues that the Court's order "does not address" numerous issues, when the reality is that the Defendant's proposed order did not address those same issues. Specifically, Defendants' four (4) enumerated "unaddressed" issues dealing with the prescriptive easement were not themselves addressed specifically in the Defense's proposed order beyond the sentence "This court disagrees with Defendant's arguments" at the start of the last paragraph on page 2 of the order.

Similarly, enumerated issues five (5) and six (6) of Defendants' motion, dealing with the false arrest and abuse of process claims were no more specifically addressed in the Defendants' proposed order, other than the Defendants' unsuccessful attempt to insert language claiming the denial of summary judgment on those matters was based in part on the deemed admitted Rule 36 admissions, when that was not the case, as evidenced by the Order.

Defendants' claimed insufficiencies of the order in regards to the RFAs ignore that fact the Order as issued **does** address the raised issues. The Order plainly addresses issues one (1) and two (2) regarding service with its specific findings regarding sworn affidavits of service and the defense's representations to both the Court and Plaintiff's counsel via email on September 22, 2021.

As to issues three (3) and four (4) with the RFAs, as a practical matter, much of the requests **should** have been admitted: the warrant is defective from the plain language on its face, as the facts relayed do not support a violation of either S.C. Code §16-11-510 or -520; the defendants' own witnesses have admitted under oath facts supporting the elements establishing a prescriptive easement; defendants' own witness admitted under oath to *ex parte* communications with the Court prior to the bond hearing; the defendants have been unable to produce any evidence that any alleged damage was ever repaired; etc.

The fact that the Defendants failed to timely respond to the RFAs even after being noticed of that failure and acknowledging they would be looking into the issue with their clients, supports the Court's finding to deny the motion to withdraw/amend. As is evidenced by the current motion, the Defendants goal is to simply delay and obstruct this matter going to trial.

Defendants' claims that the Court's order is insufficient because it does not specifically address things the Defense now claims it should, ignores the fact that the Defendants' own proposed order did not address those matters as the Defendants are now requesting and that the order **does** adequately address the issues. As such, the Defendants' motion to reconsider should be denied.

CONCLUSION

Based on the above, the Plaintiff respectfully asks that the Court deny Defendants' motion for reconsideration.

Respectfully submitted,

WUKELA LAW FIRM

s/Patrick J. McLaughlin
PATRICK J. MCLAUGHLIN
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Facsimile: 843-669-5150
Email: patrick@wukelalaw.com

Florence, SC
August 20, 2024

Exhibit 4

From:	Cothran, Ralph Ferrell, Jr. Law Clerk (Kimberly Land)
To:	Patrick Mclaughlin
Cc:	David Holler; Fred Hanna; Stephen Wukela
Subject:	RE: Case 2021CP4300099-Robert Allen Andrews VS City Of Sumter , defendant, et al added to Court Roster for period 2025-04-07 through 2025-04-11.
Date:	Tuesday, March 18, 2025 2:51:51 PM

Good afternoon,

I will talk to Judge Cothran about this motion and be in touch soon.

If I can do anything else, please let me know.

Best regards,

Kimberly W. Land
S.C. Jucicial Branch
Law Clerk
803-435-2450 (work)
803-473-8586 (cell)
rcothranlc@sccourts.org
3 West Keitt Street
Manning, SC 29102

-----Original Message-----
From: Patrick Mclaughlin <patrick@wukelalaw.com>
Sent: Tuesday, March 18, 2025 2:22 PM
To: Cothran, Ralph Ferrell, Jr. Law Clerk (Kimberly Land) <rcothranlc@sccourts.org>
Cc: David Holler <david.holler@smithrobinsonlaw.com>; Fred Hanna <fred.hanna@smithrobinsonlaw.com>; Stephen Wukela <Stephen@wukelalaw.com>; Patrick Mclaughlin <patrick@wukelalaw.com>
Subject: FW: Case 2021CP4300099-Robert Allen Andrews VS City Of Sumter , defendant, et al added to Court Roster for period 2025-04-07 through 2025-04-11.

Kimberly:

I hope you and Judge Cothran are doing well.

The above-referenced case has kept popping up at the top of the common pleas roster for some time now, but we have not been able to go forward as the defense has a motion to reconsider Judge Cothran's August 9, 2024 order.

I have attached Judge Cothran's August 9th Order, Defendant's motion to reconsider, and Plaintiff's response in opposition to that motion to this email for your convenience.

We recently received notice that the case is again on the April 7 trial roster. Plaintiff is ready to proceed to trial and would greatly appreciate any consideration Judge Cothran could give to resolving the pending motion so that this matter may proceed to trial.

Please let me know if you need anything else from the Plaintiff.

Thanks.

Patrick

-----Original Message-----
From: Courtmail43_DoNotReply@sccourts.org <Courtmail43_DoNotReply@sccourts.org>
Sent: Tuesday, March 18, 2025 1:24 PM
To: Patrick Mclaughlin <patrick@wukelalaw.com>
Subject: Case 2021CP4300099-Robert Allen Andrews VS City Of Sumter , defendant, et al added to Court Roster for period 2025-04-07 through 2025-04-11.

Attention:

The above-referenced case is scheduled on the roster. All cases are subject to trial. The roster is available at sumtercountysc.org. Any request for a continuance must be submitted by Tuesday, April 2nd, at 5:00 p.m. If your case has settled, please notify the court via email at syow@sumtercountysc.org .
REPORT TO THE JUDICIAL CENTER/215 N. Harvin St. Sumter SC/Crtrm 3B

RECEIVED
Apr 02 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2021-CP-43-00099

Robert Allen Andrews..... Respondent,

v.

City of Sumter and City of Sumter Police Department..... Appellants.

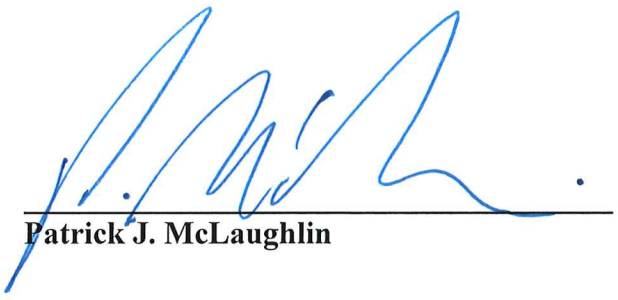
PROOF OF SERVICE

I, the undersigned attorney of the Wukela Law Firm, do hereby certify that on April 2, 2025, I have served all counsel in this action with a copy of the Motion to Dismiss and Memorandum in Support of Motion to Dismiss via electronic service to the following:

David C. Holler
Smith Robinson
126 N. Main St.
Sumter, SC 29150

Alexander W. Atkinson
Smith Robinson
126 N. Main St.
Sumter, SC 29150

Frederick N. Hanna, Jr.
Smith Robinson
126 N. Main St.
Sumter, SC 29150



Patrick J. McLaughlin

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

April 2, 2025

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
P.O. Box 11629
Columbia, SC 29211
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Andrews v. City of Sumter, et al
Lower Court Case Number.: 2021-CP-43-00099

Dear Ms. Kitchings:

Enclosed please find the Respondents' ***Motion to Dismiss and Memorandum in Support of Motion to Dismiss*** for filing pursuant to Section(b)(2) of the South Carolina Supreme Court's Order, 2022-05-06-03. Pursuant to Section(c) of that order, a firm check for the filing fee of Twenty-Five ($25.00) Dollars will be placed in USPS and go out today with a copy of this correspondence.

By courtesy copy of this correspondence sent via email only, I am serving all counsel of record, pursuant to Section(d)(1) of that same Supreme Court Order.

If anything further is needed, please let me know.

With kind regards, I am,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM/mld
Enclosures
cc: David C. Holler – Via Email Only
Alexander W. Atkinson – Via Email Only
Frederick N. Hanna, Jr. – Via Email Only