

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley Robinson, Administrative Law Judge
H. Philip Hayes, Jr., OMVH Hearing Officer

Appellate Case No. 2013-002081
Docket No. 11-ALJ-21-0563-AP
Docket No. 10-OMVH-01-3433-CC

Edward Eli Saleeby, III, Appellant,

v.

South Carolina Department of Motor
Vehicles and South Carolina Department
of Public Safety, Respondents.

MOTION FOR SUPERSEDEAS

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SC Court of Appeals

Appellant respectfully requests this Court renew the South Carolina Administrative Law Court's (A.L.C.'s) stay of the suspension of Appellant's driver's license until the decision of this Court is rendered. Appellant received the A.L.C.'s Order of August 2, 2013 on August 5, 2013, which upheld the OMVH's decision to suspend Appellant's driver's license under the implied consent statute¹. Appellant filed a motion for reconsideration on August 9, 2013, asking for the opportunity to present oral arguments in this matter, in light of some legal and factual issues that Appellant believes are novel. While the motion for reconsideration was denied, the A.L.C. granted a stay of suspension for Appellant's driver's license on August 15th, 2013 and appellant

¹ S.C. Code Ann. § 56-5-2950 (Supp. 2009)

believes it would be proper for this Court to renew that stay of suspension by issuing a Supersedeas directed to the Respondents, specifically S.C.D.M.V.

Appellant believes this motion is supported by Rule 241 of the South Carolina Appellate Court Rules which states in part, “As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order...and to automatically stay the relief ordered in the appealed order.” In the event that the A.L.C.’s Order falls under the eleventh exception to Rule 241, (appeals from administrative tribunals pursuant to S.C. Code § 1-23-380 (A)(2) and §1-23-600 (G)(5)), the Appellate Court rules allow any party to move for an order imposing a supersedeas of matters decided in the Order, and provide that “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, *appellate court*, or judge, or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.”² This Court has the authority to grant Appellant’s motion pursuant to S.C. Code Ann. § 1-23-610 (2) “Upon motion, the administrative law judge may grant, *or the court of appeals* may order, a stay upon appropriate terms.” If the stay of Appellant’s driver’s license suspension was not granted, then the Appellant’s right to appeal before the Court of Appeals would become moot, as the suspension would have been served prior to the perfection of the instant appeal. A moot case exists where a judgment rendered will have no practical effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing entity.³

WHEREFORE, the Appellant’s motion to renew the stay of his driver’s license

² S.C. Appellate Court Rule 241 (C) (2)

³ *Ex parte Doe*, 393 S.C. 147, 711 S.E.2d 892 (2011).

suspension was denied by the S.C.A.L.C. by way of the October 16, 2013⁴ Order and it appears the previously granted Order for stay of suspension expired with the denial of the motion for reconsideration on August 30, 2013. Appellant has shown that his right to appeal would be moot and that his due process rights would be prejudiced if the suspension is not stayed. The Appellant prays for relief by way of an Order imposing a stay or supersedeas of his driver's license suspension by the Respondent(s) until his appellate rights are exhausted.

Respectfully submitted,



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October 25, 2013

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⁴ SCALC's Order denying renewal of stay of suspension is attached and served with this Motion.

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I certify that I have caused a copy of the below mentioned pleading(s) to be served upon the following parties, by depositing in the United States Mail, with first class postage prepaid and affixed thereto, addressed as follows this 25th day of October, 2013.

Pleading(s) served: MOTION FOR SUPERSEDEAS

Parties Served: Jenny Abbott Kitchings
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