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Dec 29 2025

SC Court of Appeals

SC Bar #THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-002478  
Case No. 2018-CP-40-4850

Randle Jackson as the Personal Representative of the  
Estate of Dashaun Simmons, ..... Respondent,

v.

South Carolina Department of Corrections, ..... Appellant.

**APPELLANT’S RETURN TO  
RESPONDENT’S MOTION TO DISMISS APPEAL**

The Appellant South Carolina Department of Corrections has appealed from the trial court’s grant of partial summary judgment in favor of the Respondent Randle Jackson as the Personal Representative of the Estate of Dashaun Simmons. The Appellant has also appealed a Form Order Denying Motion for Reconsideration filed November 13, 2025. The Respondent has filed a motion to dismiss the appeal arguing that the orders are not immediately appealable. The Appellant opposes that motion.

With its orders, the trial court granted the Respondent’s Motion for Summary Judgment with respect to a number of affirmative defenses, including comparative negligence (including assumption of the risk), intervening negligence, and discretionary immunity. In addition, the

trial court granted summary judgment as to each of the Appellant's immunity defenses under Section 15-78-60 of the Tort Claims Act, including Section 15-78-60(17) immunity for conduct constituting an intent to harm and/or a crime of moral turpitude. In fact, in granting partial summary judgment on the Tort Claims Act immunity defenses, the trial court ruled that "as a matter of law the Defendant was grossly negligent." In short, the trial court both decided with finality the merits of numerous affirmative defenses and then also ruled on the merits of the Respondent's gross negligence claim.

South Carolina law clearly provides that a grant of partial summary judgment is immediately appealable. *See e.g., Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990) (order granting partial summary judgment is immediately appealable under S.C. Code Ann. § 14-3-330(1) and (2)); *Trivelas v. South Carolina Department of Transportation*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001) (immediate appeal adjudicated on order granting partial summary judgment). Under Section 14-3-330(1), an interlocutory order "involves the merits" when it "finally determines some substantial matter forming the whole or a part of some cause of action or defense." *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456, 456 (1988). "Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or *strike out an action or defense.*" *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529, 530 (2006). (Emphasis added).

Clearly, the orders on appeal meet the requirements of both Section 14-3-330(1) and Section 14-3-330(2) for an immediate appeal of an interlocutory order granting partial summary judgment. As discussed above, the trial court has already ruled in the Respondent's favor that the Appellant was grossly negligent *as a matter of law*. The trial court also granted partial

summary judgment and thus “struck out” numerous affirmative defenses including all Tort Claims Act immunity defenses, comparative negligence, assumption of the risk, and others. Thus, this Court has appellate jurisdiction over this appeal.

The Respondent’s other bases for asking for the appeal to be dismissed are without merit. First, the Respondent argues that the appeal is intended solely to delay the trial. That is not the case. As explained above, South Carolina statutory law allows for an interlocutory appeal where partial summary judgment is granted prior to trial. If the Respondent did not wish to delay a potential trial, he should not have filed a motion for summary judgment. He was certainly not forced to do so. He made that strategy decision and cannot now lament the fact that the partial summary judgment he sought is immediately appealable. Moreover, the Respondent’s reliance on the case of *Innovative Waste Management, Inc. v. Crest Energy Partners*, 445 S.C. 19, 911 S.E.2d 406 (2025), is misplaced. That case did not involve an appeal from a grant of partial summary judgment, nor does the decision suggest that appellate review of a partial summary judgment may be waived. Rather, the Supreme Court addressed the waiver of appellate review on discovery orders because the aggrieved party did not “preserve their objections to the prior discovery orders by immediately refusing to comply with the prior orders, suffering contempt, and appealing from the contempt finding.” 911 S.E.2d at 410. That is not the situation here.

Second, as a last-ditch attempt to dismiss the appeal, the Respondent argues that the Appellant’s appeal “lacks merit.” The merits of the issues on appeal, however, may not be summarily or pre-emptively decided on a motion to dismiss before the issues on appeal are even raised and addressed in the Appellant’s opening brief. In contrast to the Respondent, the Appellant believes that there are numerous issues of substantial merit that are being appealed. The Court is obviously not in a position to assess the merits of the appeal at this juncture.

In sum, this Court has appellate jurisdiction over this appeal. The Appellant is fully entitled to proceed with its appeal of a partial summary judgment entered by the trial court. Accordingly, the Motion to Dismiss Appeal should be denied.

Respectfully submitted,

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Randle Jackson as the Personal Representative of the  
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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant, does hereby certify that service of the **Appellant’s Return to Respondent’s Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by email only this the 29th day of December 2025, as follows:

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\*Also Admitted in North Carolina

December 29, 2025

**Via Email Only**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: Randle Jackson, individually and as the Personal Representative of the Estate of Dashaun Simmons v. South Carolina Department of Corrections  
Appellate Case Number: 2025-002478  
Civil Action Number: 2018-CP-40-4850  
Claim Number: F5172  
Our File Number: 106.20854

Dear Ms. Kitchings:

Pursuant to Section (b)(2)the Supreme Court's Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), please find attached for filing the **Appellant's Return to Respondent's Motion to Dismiss Appeal** with regard to the above referenced matter. By copy of this letter, I am serving a copy on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac  
Enclosure

cc: Joshua T. Hawkins, Esquire (w/ Enclosure, Via Email Only)  
Helena L. Jedziniak, Esquire (w/ Enclosure, Via Email Only)  
W. Baker Allen, Esquire (w/ Enclosure, Via Email Only)  
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