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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Honorable Circuit Court Judge Dianne S. Goldstein  
Circuit Court Case No. 2024-CP-08-03367

Court of Appeals Case No. 2026-03367

Stephanie Lehman,

Respondent,

v.

Berkeley County School District and  
Anne-Magill Payne, individually, and  
as an agent of Berkeley County School  
District, of whom Berkeley County  
School District is the Appellant,

Appellant.

**RESPONDENT'S REPLY IN SUPPORT OF MOTION TO DISMISS  
APPEAL**

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Respondent files this Reply pursuant to Rule 240(f), SCACR, and respectfully requests this appeal should be dismissed as interlocutory. The issue is whether the appealed orders fit within the statutory categories that allow immediate review. They do not. As explained below, Appellant’s “mode of trial” theory does not create appellate jurisdiction over a pretrial order that does not end the case.

## **ARGUMENT**

### **A. Appellant’s “Mode of Trial” Argument Does Not Create Immediate Appealability Where the Order Preserves the Jury Demand**

Appellant’s primary argument in its Return is based on its position the Circuit Court Order affects the “mode of trial” by permitting a jury to hear a statutory claim that Appellant contends should not be tried by a jury. Notably, the Court preserved Respondents claim for defamation against Respondent for which there is no contention a jury trial is proper. In *Flagstar*, this court held, “trial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right.” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 73, 533 S.E.2d 331, 333 (2000). Here, the Circuit Court has ordered trial of all the issues in this case in a single proceeding. The Circuit Court retains authority to manage the trial format as the case develops, including narrowing issues, addressing equitable versus legal components, shaping the verdict form, and issuing other findings as needed. Appellant’s appeal attempts to piecemeal each issue in this case when the more appropriate and efficient manner of addressing its concern is by way of case

management in the lower court and appeal of all issues, if necessary, at the conclusion of the case. The existence of a later remedy underscores why this interlocutory appeal does not apply to S.C. Code Ann. § 14-3-330(2).

Appellant argues the distinction between “preserving” a jury demand and “depriving” a party of a jury trial is “immaterial.” It is material for jurisdiction. If a trial court erroneously denies a jury trial to a party entitled to one, the harm is often framed as structural and requires immediate review. Here, the court did not deny Respondent a jury trial but, instead, allowed Respondent’s claims to proceed. The statutory scheme of S.C. Code Ann. § 14-3-330 does not treat every dispute about trial format as immediately appealable. The statute is clear that an order that “strikes out an answer or any part thereof of any pleading” is immediately appealable. The Court must give this statute its plain and ordinary meaning. Allowing the denial of a motion to strike to be immediately appealed is contrary to the statute and would convert ordinary pretrial rulings into routine interlocutory appeals. By way of example, Respondent’s position on this matter would mean every order on a motion to strike, regardless of whether it is granted, would be subject to immediate appeal.

**B. The Appealed Orders Still Do Not Fit Any Category in Section 14-3-330.**

Appellant relies on section 14-3-330(2) and asserts the order affects a substantial right. However, subsection (2) is not triggered because a party merely claims the existence of a substantial right. It is triggered only when the order fits one

of the statute's enumerated predicates. Appellant's Return does not identify what provision of S.C. Code Ann. § 13-330(2) applies to its position the lower court's Order is subject to immediate appeal.

First, subsection (2)(a) of S.C. Code Ann. § 13-330 does not apply because the Order does not determine the action, discontinue the action, or prevent a later appeal from a final judgment. Appellant does not contend the case is over, and the order plainly contemplates continued proceedings.

Second, subsection (2)(b) does not apply because there is no new trial order. Third, subsection (2)(c) does not apply because the lower court did not strike an answer or pleading. It denied a motion to strike. Appellant's Return repeatedly reframes the order's "practical effect," but it never confronts the text of subsection (2)(c), which requires an order actually "strike out.... any pleading." A denial of a motion is not a striking order.

**C. Appellant's Waiver Argument Does Not Create Jurisdiction Over an Interlocutory Order Not Subject to Immediate Appeal.**

Appellant argues that "failure to immediately appeal ... results in waiver." This argument is misplaced and incorrectly precedes the threshold question of whether the statute authorizes an interlocutory appeal. The threshold question remains whether the Order is immediately appealable. Because the Order is not subject to immediate appeal, Appellant's attempt to do so must be dismissed and be properly raised after final judgment. Appellant's position incorrectly reorganizes the

proper analysis by assuming immediate appealability, then uses that assumption to argue waiver. This Court's jurisdictional question must be addressed before waiver becomes an issue.

In addition, Appellant's waiver argument depends on treating the Order as a denial of the proper mode of trial in the same sense as a denial of a jury trial when S.C. Code Ann. § 14-3-330 specifically identifies a distinction. Appellant does not identify any statute that makes immediate appeal the exclusive remedy here. If Appellant believes a non-jury determination is required for some component of the case, Appellant can seek appropriate trial management relief in the Circuit Court and preserve the issue for review after final judgment.

**D. Appellant's Merits Arguments About Section 41-1-80 Do Not Control the Appealability Question.**

A significant portion of the Return is devoted to merits arguments that S.C. Code Ann. § 41-1-80 is equitable and that the Circuit Court "expanded" remedies by allowing legal damages and a jury trial. Respondent disputes Appellant's characterization, but this Court need not resolve those merits questions to decide appealability. The Court can dismiss the appeal as interlocutory because the Order does not end the case and does not fit any requirement under S.C. Code Ann. § 14-3-330 to make it subject to immediate appeal. Appellant's argument would require the Court to decide contested merits questions first in order to decide jurisdiction.

Jurisdiction must be determined by the statute and the nature of the Order, not by reviewing the merits of each party's position at the motion stage.

### **CONCLUSION**

Appellant's Return confirms it seeks piecemeal appellate review of an order that is not subject to immediate appeal. The challenged Orders do not end the case and do not satisfy any category of S.C. Code Ann. § 14-3-330. For the foregoing reasons, Respondent respectfully requests that the Court dismiss the appeal as interlocutory.

Respectfully submitted,

s/ Emmanuel J. Ferguson

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