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SC Court of Appeals



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Wanda H. Carter, Chief Appellate Defender

June 4, 2026

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

Re: The State v. Michael J. Smith  
Appellate Case No. 2026-001170

Dear Ms. Kitchings:

On March 10, 2026, Judge R. Lawton McIntosh signed an Order transferring the above titled case from General Session Court to Family Court. Said Order was filed on March 13, 2026. On May 1, 2026, Judge McIntosh signed and filed an Order denying the state's motion to reconsider.

The question to be resolved at this juncture is whether the Order at issue is immediately appealable. This is a matter of jurisdiction. S.C. Code Ann § 63-19-1210(3) allows a circuit court judge to transfer a case that “falls within the jurisdiction of the family court.” A challenge to jurisdiction, which is the power of a court to hear a case, (see State v. Harrison, 432 S.C. 448, 854 S.E.2d 468 (2021), would **not** qualify as an immediately appealable matter inasmuch as matters of jurisdiction do not fall under any category governing appealability per S.C. Code Ann §14-3-330 (1976 & Supp.2009).

The following legal judgments, decrees, and orders categorized as appealable under SC Code Ann § 14-3-330 (1976 & Supp.2009) are listed below:

- 1.) Any intermediate judgment, order or decree in a law case involving merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court of jurisdiction, and final judgements in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order of decree necessarily affecting the judgment not before appealed from; or

2.) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues that action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

3.) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; or

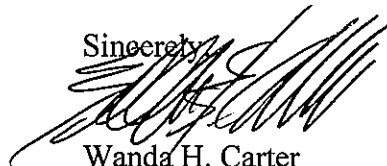
4.) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting continuing modifying, or refusing the appointment of a receiver.

Note that although there is a mention of jurisdiction under § 14-3-330 (1), said reference is tied to final judgments on the merits in cases. No such final judgment appears in the Order here. Clearly, the overall merits of cases and/or substantive rights connected to cases dictate appealability. A summary analysis of S.C. Code Ann. § 14-3-330 is that appeals are allowed broadly speaking in cases where final judgments have been issued, or where substantive rights have been affected, or where final judgments have been decided based on substantive merits. No final appealable judgment has been issued in the case at bar. Thus, the court of competent jurisdiction to hear a case of justiciable controversy would undoubtedly fail to trigger appealability rights under S.C. Code Ann § 14-3-330 (1976 & Supp. 2009).

Moreover, in State v. Wilson, 387 S.C. 597, 693 S.E.2d 923 (2010), the Court held that an order affecting a substantial right is immediately appealable when it in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action, or grants or refuses a new trial, or strikes out an answer of any part thereof or any pleading in court. The scenarios outlined in Wilson do not appear in the instant case.

As a result, the instant Order addressed a jurisdictional matter that would **not** qualify as immediately appealable. See Kent v. United States, 383 U.S. 541 (1996), where the proper redress is a waiver hearing upon motion to be held on the merits on questions regarding the definition of what constitutes a child and how the timing of the alleged offenses impacted said definition, all of which would properly preserve the substantive merits on the same for appellate review. Furthermore, if waiver is denied, an appeal can be taken thereafter on the merits therein.

Sincerely,



Wanda H. Carter  
Chief Appellate Defender

WHC/sl

cc: Mark R. Farthing, Esquire