

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
RICHLAND COUNTY

170745

Robert E. Hood, Circuit Judge, Fifth Judicial Circuit

Common Pleas Case No. 2012-CP-40-4129

Anonymous Surgeon *Appellant,*

~ vs. ~

Matthew T. Siedhoff, M.D. *Respondent.*

MOTION TO CERTIFY

Anonymous Surgeon moves the Court, pursuant to Rule 204, SCACR, to certify this case for review by the Supreme Court on grounds that Appellant will argue against precedent.

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Attorneys for the Respondent:

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SC Court of Appeals

Appellant respectfully moves this Court to certify this appeal to the Supreme Court for review under Rule 204(b), SCACR. Appellant intends to move to argue against precedent pursuant to Rule 217, SCACR and seek reversal of *Carver v. Morrow*, 213 S.C. 199, 48 S.E.2d 814 (1948). Only the Supreme Court may grant such relief.

FACTS

The facts pertinent to this motion are sufficiently set forth in the Order from which appeal is taken. Plaintiff-Appellant commenced an action for libel against the Defendant-Respondent. Plaintiff subsequently died during the course of litigation. The court below granted summary judgement for the Defendant, dismissing the case based on a judicially created defamation exception to the South Carolina Survival of Actions Statute, S.C. CODE ANN. § 15-5-90.

ARGUMENT

Carver created several exceptions to the survival statute 43 years after the statute was amended to include personal injuries in 1905. 1905 S.C. Acts 471. Under *Carver*, a defamation action dies with the person.

The statute is plain on its face, yet the *Carver* court revived several common law exceptions despite its clarity, as the Court noted in *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 564 S.E.2d 94 (2002): "Despite the clear language of the statute, this Court has created certain exceptions to the survivability statute," *Id.*, 349 S.C. at 564, 564 S.E.2d at 97.

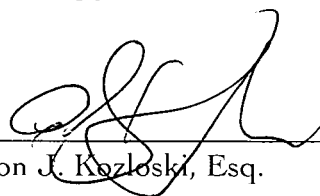
The reasoning of *Carver* is flawed. Considering that the Statute is remedial and entitled to broad application, the *Carver* Court failed to acknowledge its inclusive nature, stating instead that, "the General Assembly was careful in not including actions for injury to

character," 213 S.C. at 203, 48 S.E. 2d at 816. The General Assembly in fact did include such actions in the 1905 amendment, including "any and all injuries to the person."

The *Carver* court overstepped its powers of judicial review by reenacting common law in derogation of a clear and unambiguous remedial statute, a matter of great public importance worthy of review by the only Court that may abrogate the decision.

WHEREFORE, Appellant respectfully moves the Court to certify this case to the Supreme Court for review.

For the Appellant:

A handwritten signature in black ink, appearing to read 'A. J. Kozloski', written over a horizontal line.

Aaron J. Kozloski, Esq.

December 19, 2013
Lexington, South Carolina

STATE OF SOUTH CAROLINA
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RICHLAND COUNTY

Robert E. Hood, Circuit Judge, Fifth Judicial Circuit

Common Pleas Case No. 2012-CP-40-4129

Anonymous Surgeon *Appellant,*

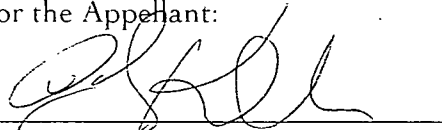
~ v. ~

Matthew T. Siedhoff, M.D. *Respondent.*

CERTIFICATE OF SERVICE

The Notice of Appeal and Motion to Certify in this case were served upon the Respondent by first class mail addressed to counsel at their address below.

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December 20, 2013
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