THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
Nov 13 2026
S.C. SUPREME COURT

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge
Civil Action No. 2022-CP-28-00782
Appellate Case No. 2024-000833

Christine Jernigan and Justin Jernigan …….., Appellants,

v.

Kershaw County Sheriff's Office…….., Respondent.

RESPONSE IN OPPOSITION TO APPELLANTS' PETITION FOR A WRIT OF CERTIORARI

The Court of Appeals properly dismissed this appeal on the ground that the appeal was from three non-appealable interlocutory orders in a Freedom of Information Act case:

(1) Order denying Appellant's motions before the trial court for sanctions/contempt; Record @ p. 315

(2) After denial of the sanctions motion, Order on Appellants' subsequent motion for the Judge to recuse himself, or reconsider; Record @ 561

(3) Order denying Rule 59(e) motion for reconsideration. Record @ 585

The trial court did not issue any appealable final orders. The merits of the case were not reached. Instead, each of those orders were interlocutory discovery matters that did not rule upon the merits or conclude the case. For that reason, this petition for a writ of certiorari should be denied as there is no appellate jurisdiction.

Section 14-3-330 of the South Carolina Code governs the appellate jurisdiction of the courts. It says:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:
>
> (1) Any intermediate judgment, order or decree in a law case involving the 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 or jurisdiction, and final judgments 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 or decree necessarily affecting the judgment not before appealed from;
>
> (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 the 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; and
>
> (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.

Discovery orders are interlocutory orders that are not appealable. They do not involve the merits of the action or affect a substantial right. *Grossheusch v. Cramer,* 659 S.E.2d 112, 122 (2008). Likewise, a motion for disqualification of a judge is an interlocutory order and is not a ruling on the merits and not immediately appealable. *Townsend v. Townsend*, 474 S.E.2d 424, 427 (1996).

The subject of this FOIA action arises out of a traffic stop by Respondent. Appellant filed a motion for sanctions/contempt over matters that he insists exist as a result of that traffic stop but were not produced. Appellant insists that an incident report was required to be made so one was obviously made and improperly withheld. He also sought audio recordings of telephone conversations among other matters.

After the traffic stop, Respondent determined this to be a civil matter which required no follow-up investigation. Therefore, no incident report was required or prepared. KCSO deputies do not carry department issued cell phones and their personal phones are not recorded. Any audio recordings of any calls that were made on recorded lines are maintained by Kershaw County Dispatch – a separate entity from KCSO. Kershaw County Dispatch handles dispatch for several agencies and issues a Computer Aided Dispatch form (CAD report) where they make notes of what has been said on the radio or phone. That CAD report is available to the Sheriff's Department. But the underlying recordings are maintained solely by Kershaw County Dispatch, not KCSO. Despite those explanations, Appellant insists that KCSO was hiding the ball in responding to FOIA and in discovery in the FOIA case. He filed motions addressing those matters and the resulting orders are the subject of this appeal.

South Carolina authority treats ordinary discovery orders as interlocutory because they generally do not involve the merits or affect a substantial right. *Richardson v. Halcyon Real Estate Services, LLP*, 887 S.E.2d 153, 156-57, (Ct.App 2023); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 813 S.E.2d 544 (Ct.App. 2018). In *Richardson*, the court held that a discovery-sanctions award of attorney's fees and costs was not final or immediately appealable because it neither involved the case merits nor affected a substantial right. An immediate appeal would further delay the case and increase costs. *Richardson* @ 156. The court also held that the part of the order requiring the parties to reconvene depositions was interlocutory, applying the rule that an order directing a party to participate in discovery is not directly appealable. *Id.*

Likewise, *Hodge* states the general rule that discovery orders are not immediately appealable because they do not, within the meaning of the appealability statute, involve the action's merits or affect a substantial right. *Hodge @ footnote 9.* The analysis is not controlled simply by

calling an order a sanctions ruling. Instead, the court examines what the order decides and its effect on the ongoing action.

The first order appealed from denies Appellant's motion for Sanctions/Contempt. Judge Daniel Coble heard arguments on the motion and denied any award of sanctions or contempt. However, he did not rule on the merits of the underlying FOIA action. His order did not end the case. Instead, his ruling simply found that the Respondent complied with the prior court order to the best of its ability and in good faith, leaving disputes about those materials for a later judge. Record @ 315. That order simply regulates discovery and defers resolution of the FOIA production issues. It does not itself decide whether there are incident reports, calls, videos or other materials that must be disclosed under FOIA that have not been produced or have been destroyed. Nor does it determine that the production was sufficient and complete. Nothing in that order ends the FOIA case. It simply finds no contempt of court in responding to a prior court order. The discovery rulings in *Richardson* and the general rule in *Hodge* support treating such an order as interlocutory rather than as a merits ruling.

The result could differ if the order actually determined the action, prevented an appealable final judgment, discontinued the action, or otherwise met a statutory basis for immediate review, but it does not. The order is clearly interlocutory because it manages discovery and postpones the production merits, rather than resolving the FOIA claim or satisfying a statutory exception for immediate appeal.

In response to that Order, Appellants filed a motion to recuse, vacate and re-assign or alternatively to reconsider that Order. That motion was denied and is the second order appealed from. Record @ 561. With no real factual basis, Appellants contended that Judge Coble was not impartial and requested that he vacate his order and recuse himself. There is no evidence of bias

in the record. Judge Coble denied the motion to recuse himself. *Townsend* instructs that such an order is not immediately appealable. *Townsend* @ 427. Then, in the same motion, Appellants requested that Judge Coble reconsider his ruling. Judge Coble properly denied the motion to reconsider the denial of sanctions too. That was denied. That too is not a final order and does not affect the merits of the action.

Appellants followed their consistent approach and filed a second motion to: (1) Again Reconsider the denial of the original sanctions motion, (2) Reconsider the subsequent motion to vacate and recuse and (3) Reconsider the denial of the first motion to reconsider. That is the third motion appealed from. That motion was also denied. Record @ 585. This appeal followed.

The denial of the motion for sanctions is not immediately appealable as discussed above. Likewise, the denial of the motion to reconsider the motion for sanctions is not appealable for the same reasons as the denial of the motion for sanctions. This is a discovery order that did not end the case or rule on the merits.

The denial of the motion for the judge to recuse himself or vacate the Order denying sanctions is not appealable for the same reasons: it does not end the case or rule on the merits.

Appellant further insists that the trial court ruled upon the merits of the FOIA action "sub silento." As much as Respondent would like for the merits of the case to have been ruled upon, the orders do not. The lower court simply ruled upon a sanctions motion, a subsequent motion for the court to recuse itself because of the ruling on the sanctions motion and a motion to reconsider the order on the sanctions motion. The orders below did not end the case and the form orders issued indicated that the case was not ended. The merits of the action remain to be heard in the trial court.

The Court of Appeals properly recognized that this was a discovery matter that was appropriately decided by the trial court and dismissed the appeal on the grounds that the orders appealed from did not end the case or rule on the merits of the case. When this case is remitted to the trial court, the merits will appropriately be preserved for trial. The Appellant prematurely appealed the case before it was decided and delayed the case from moving forward to a conclusion. The sub silento ruling is not found anywhere in the language of the orders, nor can it be reasonably inferred from that language. Appellant complains about an alleged spoilation of evidence regarding body warm camera data. That issue does not appear anywhere in the orders of the lower court and has not been ruled upon by the lower court. That matter is still preserved for ruling in the lower court.

The Court of Appeals got it right. This case was prematurely appealed. This petition for a writ of certiorari should be denied because there is no appellate issue or jurisdiction.

GARFIELD SPREEUWERS LAW GROUP

By: *s/ David L. Morrison*

David L. Morrison (Bar #4101)
1220 Pickens Street
Columbia, South Carolina 29201
T: (803) 830-5496
E-mail: david@gslawsc.com

Attorney for Defendant/Respondent

Columbia, South Carolina

November 13, 2026